

# JOURNAL OF LAW AND PUBLIC POLICY

## URBAN POOR AND THE LAW

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**NATIONAL LAW SCHOOL OF INDIA UNIVERSITY**  
**BENGALURU**



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**CENTRE FOR ENVIRONMENTAL LAW, EDUCATION,  
RESEARCH AND ADVOCACY (CEERA)**

**NATIONAL LAW SCHOOL OF INDIA UNIVERSITY  
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## EDITORIAL

One vulnerable group stands out in the complex tapestry of urban landscapes: the urban poor. These marginalized individuals often find themselves trapped in a web of poverty, limited access to basic amenities, and a constant struggle for survival. Amidst this reality, the role of the law becomes crucial in safeguarding their rights and ensuring social justice. Our journal is dedicated to shedding light on the issues faced by the urban poor and exploring the transformative power of law to improve their lives.

Further, urban areas act as magnets, attracting individuals seeking opportunities, better living conditions, and access to essential services. However, this influx creates a stark contrast between the haves and have-nots, often resulting in slums and informal settlements. The urban poor face multifaceted challenges, including inadequate housing, lack of sanitation, limited access to education and healthcare, and limited livelihood opportunities. In the paradigm of the societal pyramid, these are the very people who become the drivers of all kinds of chores and when it comes to their rights, they are almost forgotten.

This eighth edition of the Journal of Law and Public Policy (JLPP) focuses especially on the urban poor and how the law serves as a platform to explore the challenges faced by this marginalized community and highlight the transformative potential of legal frameworks. The unique aspect of this edition is that every article has a roadmap followed by the writeup, to present the essence of the same in a gist. With this let us join hands to foster an equitable society where the urban poor are not just beneficiaries of justice but active participants in shaping their own future.

This issue of JLPP received an overwhelming response with invaluable contributions from scholars, researchers, practitioners, professors, and students. The Editorial Board has invested significant time and effort towards shortlisting such contributions by conducting peer review and finalizing the selected submissions.



On behalf of the Editorial Board, I express my gratitude to our Vice Chancellor, Prof. (Dr.) Sudhir Krishnaswamy for his encouragement and administrative support and sincerely thank him for the same. Further, I would like to personally thank every member of the Board of Editors, Sub-Editors, and the NLSIU administration for extending their cooperation and providing their insightful suggestions and precious inputs in bringing out the current issue. With this let us go through the pages that hold some intricate ideas on the rights of the urban poor people.

First, we have Dr. Anjana Hazarika, her article on '*Urban Poor and the Violation of their Human Rights: Will there be an End?*' has focused on the Human Rights perspective. She writes about the demographic divide and how it drives the poor to abject poverty. She iterates how basic rights such as safe drinking water, food, shelter, and sanitation are neglected by public institutions and the economic and social vulnerability they are subject to restricts their ability to articulate their demands and priorities. She sets the premise by discussing the attempts of the State at slum rehabilitation and the discrepancies it faced. The paper further explores the competency of PPPs, community-based organizations, and NGOs in reviving and developing the lives of slum dwellers.

Dr. Ishita Sharma and Dr. Shiva Satish Sharda have contributed to the persistently discussed 'right to city' with their article titled '*Right to City: A Response Assessment of the Status Quo of Slums in the State of Punjab*' by presenting a response assessment of the status quo of the slums in Punjab. They while delving into the philosophical and jurisprudential spectrum of the right to city, have provided extensive research and crucial insights on the significance of such a right and the urgency to recognize, implement and act upon it. They evaluate national and state-level legislations, schemes, and initiatives by bringing to light the drawbacks it suffers from. In pursuant to this, they have also discussed possible suggestions and the way forward to better handle the current circumstance in the state of Punjab.

In the next article, Pratibha Hiremath and Dr. Chandrakanthi L through their article titled '*Study on Actions of the Karnataka Slum Development Boards*

*for Betterment of Slum Dwellers: With Special Reference to Bangalore City* have traced the actions taken by the Karnataka Slum Development Board for the development of slum dwellers specifically analyzing the schemes, actions, and strategies carried out in the city of Bangalore. They have focused on authorities such as the Karnataka Slum Areas (Improvement and Clearance) Act, the Slum Clearance Board, and the Karnataka Slum Development Board among others. Through the paper, they delved into the status quo of slum dwellers in Bangalore while laying out the efficiency of the legislation and other actions of the Slum Development Board using the latest data. Upon critical analysis of such schemes, they conclude that the Karnataka Slum Development Board is taking considerable steps to resolve such issues through government housing schemes, actions, and initiatives.

Further, Dr. Kshitij Naikade, Dr. Manika Kamthan, and Dr. Shashikala Gurpur in their article '*Inclusive Urban Planning with respect to Slum Administration: Case Study of Pune's Biggest Slum, Janata Vasahat*' analyze the concept of inclusive urban planning relating to slum administration and its importance. They have utilized and relied on primary data collected by them in *Janata Vasahat*, Pune's biggest slum. They have looked into the state of slum administration during the COVID-19 pandemic and how the same provided an opportunity for civic bodies to revisit and redraw their governance mechanisms concerning urban planning for slum dwellers. Overall, they have hypothesized how slum administration during a volatile timeline was successfully tackled by *Janata Vasahat* without active assistance from municipal bodies, and how this analysis can be referred to by urban planners to tackle such circumstances hereon.

The next piece is by Jyotirmoy Banerjee and Saloni Bahl, who have written on the '*Study on the Role of Self-Help Groups in the Development of Rural Families since 2010*'. They have studied the role of self-help groups in the development of rural families from the year 2010. Further, they have systematically laid down what the SHGs are and the authorities from which they derive their power. They have elucidated the impact of such groups on micro-financing, rural development, employment, and other social activities. Further, they analyze the contribution of SHGs during the pandemic by providing commendable

suggestions to encourage and promote such groups to achieve financial independence for women in rural and semi-urban areas. Lastly, the authors have brought to light a crucial aspect of rural development – access to finance, especially for women.

Further, Dr. Anitha M in her article titled '*The Socio-Economic Characteristics of Migrant Construction Workers in India: An Overview*' has contributed to the socio-economic position of migrant workers in the construction sector in India. She has analyzed the two prominent and persistent issues that migrant workers face to date: gender discrimination and labor safety. Her paper explores the plight of such workers in the construction sector in detail which is supported by a primary study conducted collecting data samples from 300 workers in Devanahalli Taluk in Bangalore city. Among her observations, literacy, insufficient pay, and unequal remuneration were the key pointers to their situation. Under this study, she has provided recommendations such as organizing literacy campaigns and active implementation of existing schemes for the improvement of the subsisting conditions.

The next article by Aparna S titled '*Evaluating India's Foreign Trade Policy vis-à-vis Atmanirbhar Bharat Abhiyan*' evaluates whether India's thrust towards being Self-Reliant and its rigorous pursuit of trade negotiations with foreign countries are mutually reconcilable goals. It argues that the recalibrated approach in India's trade policy, following the emphasis on Atmanirbhar Bharat is likely to pose significant impediments in its trade with other countries. It further postulates that the present design of Atmanirbhar Bharat is insufficient to address India's import dependency on other countries for inputs and intermediate goods.

The next article is by Abhishek Rodricks and Shibasish Bhattacharjee on '*A Socio Policy Analysis on the Effectiveness of Judicial Remedies Available in cases of Illegal Demolition in India – State Policy vis-à-vis Human Rights*'. They have analyzed the judicial remedies available in matters of illegal demolition in India and their effectiveness of the same. While highlighting the plight of slum dwellers and their indigent circumstances, they have also examined the role of the judiciary in protecting the rights of such people, constitutionally and otherwise. It also touches on the demolitions as pseudo-legal given the variables such as limited

access to legal help, and how authorities, despite judicial intervention, the same has been compromised. The paper recommends possible policy changes and statutory amendments while highlighting that such demolitions can be replaced by more welfare-oriented measures.

Further, Arunima Goel through her contribution in '*Compensation and Rehabilitation Rights of Displaced People in India – A Critical Study*' has critically studied the compensation and rehabilitation rights of displaced people in India. She has primarily focused on land acquisition as a cause of displacement of people. In furtherance of this, she has looked into compensation and rehabilitation provisions in the Constitution of India as well as in the Land Acquisition Act. She provides a detailed run-through of the procedure involved in obtaining fair compensation and rehabilitation under the relevant authorities such as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013. In her paper, she has provided a comparative analysis of the provisions and rights regarding the displaced across all the appropriate legislations that provide for the same. Conclusively, it provides a dissection of the Land Acquisition Act and other acts that have been legislated to portray the current legal framework and remedies available to displaced persons and the various discrepancies faced.

The next article by Nikita S and Kritika, titled '*Impact on Health and Mental Well-being of Families Affected by Forced Eviction*' delved into the impact on the health and mental well-being of families affected by forced eviction. The paper is a result of a primary survey conducted by them in multiple localities in the urban district of Bangalore. The study and its findings are contextualized by analyzing the legal framework in national as well as international spectrums. The lacunae in such instruments have been enlisted further followed by policy recommendations to handle issues faced by families subject to forced evictions.

Lastly, Ashish Pathak and Gauri Kaushik through their article titled '*Slum Dwellers and their Fate: A Need to Curb Livelihood and Healthcare Problems*' have made a contribution revolving around the livelihood security and healthcare issues of slum dwellers in India. They have described the pervasive challenges

faced by slum dwellers and parallelly have traced the constitutional provisions and other legislative safeguards available to them. Further, their contentions have been supported by referring to literary works of acclaimed authors. The paper outlines the various poverty alleviation schemes and the reasons for their failure while also providing viable solutions for the upliftment of slum dwellers.

With this, I earnestly thank the Editorial Board members: Prof. K C Sunny, Prof. T.R. Subramanya, Prof. Sandeepa Bhat B., Dr. Shaber Ali, Dr. J.M. Mallikarjunaiah and Dr. Vani Kesari for their time and sincere efforts in bringing out a quality publication. I also express my appreciation to Ms. Susheela Suresh, Sandhya S. and Prateek Kamath. Further, I especially thank Jaibatruka Mohanta for his exceptional work in bringing out this edition. Lastly, the entire CEERA Team for assisting the Editorial Board in every stage involved in the publication of this issue.

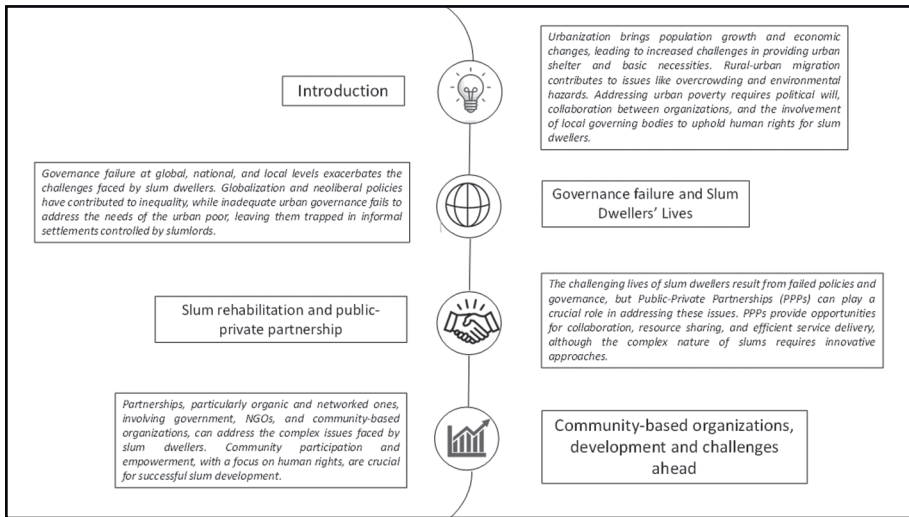
***Prof. (Dr.) Sairam Bhat***

Professor of Law & Coordinator, CEERA-NLSIU

Chief Editor JLPP

# URBAN POOR AND THE VIOLATION OF THEIR HUMAN RIGHTS: WILL THERE BE AN END?

*Dr. Anjana Hazarika\**



## *Abstract*

Poverty itself is a crime. The very instance of poverty is an assault on human dignity. Truly, urban poverty reflects discrimination. More so, it is a sheer violation of human rights. Poverty in urban centers has fast become a chronic problem and a grand dilemma for local, national, and global governance institutions. Human rights are out of reach for those who are living under the spectre of poverty. Appropriately, poverty can be termed as a direct consequence of government policies wherein public institutions have miserably failed to act or intervene.

The 'urban poor' referred to here in this paper is 'slum dwellers'. The 'demographic divide' pervasive in the cities, especially in emerging economies and in advanced nations is becoming unmanageable for

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civic administration. Massive migration from rural and peripheral areas to the city centers either for employment opportunities or for better settlement is jeopardizing the existing life and living conditions both for the poor and for the inhabitants of the cities. Basic rights such as the right to safe drinking water, food, shelter, and sanitation are largely denied to the slum population. Primarily, their rights are violated by the state and its agencies. Bringing urban poverty to an end is an uphill task. However, emphasizing this premise, the good old public institutions can no longer ignore the burgeoning problems of the slum dwellers. They are our people, but the issue at heart is that they are voiceless, vulnerable, and especially trapped by poverty. They alone cannot articulate their demands and priorities. It is the fundamental responsibility of the Government to address their basic concerns on their behalf. Finally, it can very well be said that the 'slum challenge' that is rising more than ever before is a global problem. It is both a moral and legal responsibility of the national governments to safeguard the universally recognized human rights of the slum population.

**Keywords:** Urban poor, poverty, crime, human rights, vulnerability.

## **Contents**

- A. Introduction
- B. Governance Failure and Slum Dwellers' Lives
- C. Slum Rehabilitation and Public Private Partnership
- D. Community-Based Organizations, Development, and Challenges Ahead
- E. Way Forward

## **A. INTRODUCTION**

Urbanization is synonymous with the movement and mobility of people and development. It refers to population growth and changes in the economic, social, and political structure of a country. Demographers define urbanization as an increasing population in urban areas. The high increase in urban population has called for an unprecedented magnitude of several crises including urban shelter provision. Every year there is a 70 million increase in the urban population.<sup>1</sup>

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<sup>1</sup> Kabir Agarwal, *India's Population Will be 1.52 Billion by 2036, With 70 % of Increase in Urban Areas*, THE WIRE (Aug, 13, 2020), <https://thewire.in/government/india-population-growth-government-report-2036-projections-urban-migration>.

The stretched capacity of most urban economies in developing countries is unable to meet more than a fraction of their basic needs. So, the informal sector is providing most of the new employment and necessities, where more than half of the population in many cities and towns in developing countries are currently residing and working.<sup>2</sup>

Internal migration or net migration to urban areas in particular, drives the urbanization of a country's population.<sup>3</sup> In an urbanized world, the transformation of the population distribution is inevitable, though not as linear or rapid as predicted. Primarily, urbanization is intricately linked with economic growth, and so employment moves from agriculture to industry increasingly on a large-scale basis.

Rural-urban migration could be one of the reasons. Though the economic benefits of urbanization are highly recognized, the pace of urbanization and the capacity of governments at the local and national levels underpin its ability to cope with it. Especially in low-income countries, rural-urban migration is contributing to a whole lot of issues related to basic infrastructure and services, overcrowding and congestion, and above all, increasing exposure to environmental hazards.

There is no doubt that these can pose a serious challenge to national and local governance. Urbanization is distinct from urban population growth, although the two terms are often conflated. It is a fact that urban and rural populations are all growing as a result of urbanization.

Rural-urban migration is an important factor in urbanization, though it has a lesser role in urban growth. It relies more on the natural growth of the population. In hindsight, exclusive policies developed to reduce rural-urban migration are often averse to the interest of those living in poverty, regardless of

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2 UNITED NATIONS HUMAN SETTLEMENT PROGRAMME (UNHSP), *THE CHALLENGE OF SLUMS: GLOBAL REPORT ON HUMAN SETTLEMENT* (2003), <https://unhabitat.org/sites/default/files/download-manager-files.pdf>.

3 Cecilia Tacoli, et al., *Urbanization, rural-urban Migration and Urban Poverty* (IIED Working Paper, 2015).



their migrant status. Arguably, the rural–urban migrants are not a homogeneous group considering their diversity, destinations, and movements. Also, not all rural-urban migrants are poor but as migrants, they face disproportionate disadvantages.

Urbanization poses significant challenges. Among the many implications of urbanization, is the issue of urban poverty, specifically, urban slum dwellers. Slums and urban poverty are not just a result of population explosion and demographic change or manifestation of globalization. The UN defines the slum as people occupying the same settlement in an urban area without any basic facilities, starting from secure tenure, and durable housing with improved water and sanitation facilities. Slums are a result of the failure of law, delivery systems, housing policies as well as government policies. Most importantly, it is a lack of political will that limits the progress in addressing the issues in a structured manner. Political will accompanied by local ownership and leadership, mobilization of the potential and capacity of the stakeholders particularly slum dwellers themselves can uphold a structural change.

## **B. GOVERNANCE FAILURE AND SLUM DWELLERS' LIVES**

Governance failure at all levels – be it global, national, or local have an abysmal impact on slum dwellers. At the global level, unrestrained globalization has weakened states accommodating inequality and marginalization. At the national level, liberalization, and sectoral fragmentation of policy have failed to comprehend the urban-rural dynamics which are critical for sustainable growth. Admittedly, at the local level slum dwellers are pushed to illegality, insecurity, and environmental degradation.<sup>4</sup>

For the last three to four decades, globalization as established by the geo-political system of the neo-liberal order enhanced inequality and disparity.<sup>5</sup> At the national level, it was legitimized by a structural adjustment program instituted by the developing countries which weakened the role of the cities by

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<sup>4</sup> UNHSP, *supra* note 2.

<sup>5</sup> *Id.* at 5.

emphasizing more on agricultural export, as against the demographic movement of the population from rural to urban. This resulted in the growth of the informal sector in the cities with the shrinking formal employment avenues. Hence, there has been an increase in urban poverty and the growth of slums in the last thirty years, with increased exclusion and inequality.

Urban Governance being the backbone of development, but mostly neglected by higher levels of government where resources lie, cannot address the issues of the slum dwellers. One can also argue that the failure of national and city governance is rapid urbanization. The basic responsibility of both the city and national governments is to put the effort systemically and provide essential services to the urban dwellers. The urban poor being trapped in the informal world are far removed from the world of public services and have no end to their agonies.

Administratively, slums are under the town or city authority, but in reality, informal slumlords or other leadership control the slums without much benefit to the people.

## **C. SLUM REHABILITATION AND PUBLIC-PRIVATE PARTNERSHIP**

The challenging lives of the slum dwellers result from failed policies, poor governance, inappropriate regulation, inadequate financial system, and a fundamental lack of political will. Couched in the larger political-economic context, improving slum conditions necessitates the efforts of the governments but also other community members, entrepreneurs, and slum dwellers. In this regard, Public-Private partnership (PPP) can collaboratively work to address the issues of the slum dwellers. Public –Private partnerships are varied.<sup>6</sup> It is an effort between two or more public and private autonomous organizations to collaborate and develop products, and services, sharing risks, expenses, and benefits.<sup>7</sup>

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6 Alexandre Faria & Erick Elysio Reis Amorim, *Public-private Partnership for Slum Upgrading Intervention 1*, 5 (Conference Paper for the 5<sup>th</sup> International Conference on Public Policy 5-9 July 2021 Organised by International Public Policy Association, Barcelona 2021).

7 *Id.* at 6.

## **Why PPP Engagement in Slum Development?**

The public sector enterprises have access to capital, ownership of resources, and a positive record of delivering products efficiently, while also controlling the regulating environment. Its efficiency in the implementation of policies has rendered PPP providers of reliable services, and undaunted leaders of urban governance and policy. They are perceived as tools that could provide low-cost solutions to urban problems.<sup>8</sup> The primacy of PPP in the development process is not new. Since the 1980s its involvement both in formal and informal governance systems speaks their significance in the political and economic scenario and elevated the status of the private sector in resourcefulness and efficiency.

This is somehow consistent with the structural adjustment program throughout the developing countries in their attempt to privatize and break the external barriers to the free market. Unequivocally, one can argue that the partnership experience between the public and private sector is not only to mitigate the problems and make it lucrative for the private sector but a sense of responsibility is rendered so that aim of achieving the target is not faltered.

Essentially, the private sector's concern is the return from its investments, services, and resources and the public sector involves risk mitigation which necessitates a sophisticated system with a strong legal framework. Because of the complex nature of the slum ecosystem with rampant poverty, unstable terrain, and high incidence of crime, it is perceived as risky for such a partnership. The dynamics of slums are different from any human settlements which require different sorts of planning and intervention. Due to the complex and multiple issues of slums, conventional public–private partnerships may not adequately address the problems.

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8 Tina Chang, *Improving Slum Conditions with Public Private Partnerships*, in REAL CORP 2009: CITIES 3.0 – SMAR, SUSTAINABLE, INTEGRATIVE: STRATEGIES, CONCEPTS AND TECHNOLOGIES FOR PLANNING THE URBAN FUTURE (Manfred Schrenk, et al., eds., 2009).

## **D. COMMUNITY-BASED ORGANIZATIONS, DEVELOPMENT AND CHALLENGES AHEAD**

Admittedly, partnerships that are organic in nature, are based on a close network, and popularised as a networked partnership are one of the most appropriate options. Trust is the core of such a partnership with an adaptable relationship between different actors involved. It aims to integrate the settlement with the larger society, unlike others that may stress the improvement of the site, not necessarily the livelihoods of dwellers. Such partnerships underpin the established system of governance, both the state and the private sector in adequately addressing the issues of the slum dwellers.

Given the diverse and nuanced nature of slum communities, the involvement of the third sector, NGOs, and Community-based organizations can do justice because of their social and humane approach. Arguably, Slum dwellers' problems are deeply entrenched and governments in both developing and developed countries are not successful in tackling their problems. During the last few decades, intensive participatory and community-based development have been in sway. Participatory and community-based projects offer effective solutions to a variety of socio, economic, cultural, and political problems. These initiatives value local people and their experiences as they know their problems and challenges. Community participation relates to community involvement in promoting local-based self-governance and effectively pursuing strategies. Community development relates to the inclusion of development in health, education, and social issues. This can truly help to enhance levels of maintenance and sustainability of slum development.

Governments in developing countries have attempted to solve some of the basic problems. These development policies may or may not have achieved their desired goal. Decentralization can be a way to make possible local initiatives to respond to local social, economic, and cultural conditions directly. Linking national and local problems and local implementation and participation of multi-stakeholders including NGOs are crucial to gauging the dynamics of the slum system. In this drive, roping in the private sector, donor organizations,

and community members can be a bonus. The grass root community's role in slum development is significant, but not free from challenges.

The concept of grass root was specifically cantered around activities either in rural or urban neighbourhoods. In some contexts, it is used to refer to village-level communities rather than urban ones. But due to globalization, the term grass root has changed. At the global level, activism in the form of protest for instance at the World Economic Forum in New York City<sup>9</sup> and deliberations at the World Social Forum in Porto Alegre termed Grass root Globalization.<sup>10</sup> Both Bruno and Karliner regard these as very different from representing grass root voices, for few marginalized were part of the activism. Grass root is not the same in all contexts. It appears that grass root means different in a national or local context and global activism it is different. Hence, grassroots and non-grassroots differ in terms of the degree of vulnerability to global policy and economic change.

Civil Society networks and NGOs represent the issues of poor and marginalized sections, not only at the national or local level but in global policy realms. The Global NGOs and civil society concerns are for the marginalized but often have few formal or direct stakeholders. Ironically, the issues of the communities and their strategic priorities are rarely represented and subject to debate.<sup>11</sup>

These networks are conscious of global issues. NGOs and citizen networks feel they have the right to participate in global decision-making, yet much less attention has been paid to their obligations in pursuing this role responsibly, or to concrete ways in which these rights might be expressed in the emerging structures of global governance.<sup>12</sup>

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9 Kenny Bruno, *The Whole World Was Watching: New York Stages a Peaceful Protest Against World Economic Forum*, CORP WATCH (Feb. 06, 2002), <https://www.corpwatch.org/article/whole-world-was-watching>.

10 Joshua Karliner, *Porte Alegre. Globalizing Hope: Another World is Still Possible*, CORP WATCH (Feb. 06, 2002), <https://www.corpwatch.org/article/globalizing-hope>.

11 Srilatha Batliwala, *Grassroots Movements as Transnational Actors: Implications for Global Civil Society*, 13 INTERNATIONAL JOURNAL OF VOLUNTARY AND NON-PROFIT ORGANIZATION 393 (2002).

12 Michael Edwards, *Global Civil Society and Community Exchanges: A Different Form of Movement*, 13 ENVIRONMENT & URBANIZATION 145 (2001).

Admittedly, at the national level, advocacy spaces are occupied by elite NGOs for influencing policies, and they may or may not have any direct connection and accountability with the communities affected by such policies. Otherwise, they may have a completely different perception of the nature of the problem. Another angle to this whole problem is that Government authorities often collaborate and reinforce the exclusion of direct stakeholders by inviting elite NGOs into policy-making processes rather than the local grass root organizations. But in countries with histories of organizing democratic spaces for citizen participation in policy formation, larger numbers of community-based organizations have gained direct access to policy practices. Residents of slums rely more on self-management, with the least government intervention, despite being informed about their rights, and responsibilities.

The concerns and needs of slum dwellers are mostly fulfilled through conciliation and partnerships. Self-management in communities does not have any help which means that the participation of the citizens is purely from the communities. with support from NGOs and government agencies.<sup>13</sup>

Given the burgeoning problem of slum dwellers, there is a need to build a framework to address several issues of these marginalized constituencies with a collective effort from the government, NGOs, Community based Organizations, donor agencies, and citizens. Keeping in mind the heterogeneity and homogeneity that co-exist in these human clusters, the advocacy groups can build up a more inclusive strategy so that these geographically and culturally dispersed groups can benefit.

Community and citizen participation in community development participation is important for better outcomes. Arguably, such participation can help residents in developing a sense of ownership and belonging till the implementation of the projects. Such participation essentially helps in upgrading the slums and their dwellers, but they are not free from concerns. A few concerns could be about the way residents can involve themselves or how they are encouraged in the implementation of the projects. Community participation within

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13 *Id.* at 13.

slum development has proved to be beneficial but with multiple stakeholder involvement, however, one cannot rule out the complexity angle. For instance, the NGOs' area of interest may collide with the local authority whose focus is on the improvement of efficiency in the operation and maintenance of services and utilities. Citizens may not be concerned because most of the upgrading tasks are initiated by outsiders, Participation is not just about taking part in tasks sporadically which citizens or beneficiaries may do so, as development strategies are initiated by outsiders. Participation can be the responsibility of the authorities with other stakeholders in pursuit of a common good. The irony is that when the locals adopt ownership it becomes a vital element in the development process of the slums, transforming the citizens from just recipients to active agents of change.

The localized nature of the organization is not just limited to the slum. It can develop as a network promoting participation where principally residents can work with stakeholders to achieve their mutual goals. A civil society will develop valuable collective action usually for public good than personal gain.

Further in the process of community participation, there is a growing incidence of partnership between the government and Community Based Organizations (CBOs).<sup>14</sup> In the context of slums, there is a strong relationship between CBOs and social change. It is observed that quite often NGOs at the grass root level heavily rely on CBOs for the implementation of the strategies because CBOs are based in slums. CBOs being based in slums share a good rapport with the communities and can be catalysts of change. Slum dwellers are as significant as anyone else in the city and are an indispensable human resource for the rest of the city dwellers but unfortunately stand as most neglected. CBOs can bring about considerable change in the slum, but not without challenges. The common problems are coordination, monitoring, and reporting of activities implemented through the Government and NGOs.<sup>15</sup> Also, CBOs are constituted of members with diverse backgrounds in terms of skills or

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14 Kuldeep Singh, *Strengthening Community-based Organizations for Slum Development*, 7 INTERNATIONAL JOURNAL FOR RESEARCH PUBLICATION & SEMINAR 1, 5 (2016).

15 *Id.* at 15.

experience. Normally, when the NGOs rely on the CBOs in the implementation of their activities there is minimal effort taken to build their capacities or assess their inbuilt knowledge about the issues.<sup>16</sup>

Leadership is another important factor in such a process that is missing in these grass root organizations. Inadvertently, lack of quality leadership acts as a barrier to engaging with the city governance and fails to draw attention. The diversity in the demographic pattern of the slums with multiple leadership both formal and informal may hinder the development of the slums. Socio-religious and economic factors like caste, religion, and political affiliation generally get attached to leadership and might as well create a gap in the improvement of the lives of the slum dwellers.

Besides such challenges, optimism swings high in CBOs' capacity to bring about changes in the slums. The best possible approach could be an improvement in leadership, capacity building, information flow, and coordination in the CBOs. The aim of empowering the slum dwellers can be easily achieved when the NGOs adopt transparency while engaging and spending quality with the CBOs. While doing so, the partnership model that has been put forward above needs to hover around the core issue of the protection of human rights. This is what is required because unless these fundamental precepts are preserved and protected, the dignity and livelihood of slum dwellers will be missing.

### **Slum Dwellers and Human Rights**

The slum dwellers across the world are encountering the violation of human rights. It is because they are denied basic rights such as safe drinking water, electricity, food, shelter, and sanitation. It is the moral and legal responsibility of the rest of us to help them enjoy these basic rights. But then there is a fundamental question-why global governance institutions such as the UN and its human right and development agencies not able to support the slum population to reclaim their rights? The UN alone cannot solve this complex

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<sup>16</sup> *Id.* at 15.



issue.<sup>17</sup> Therefore, this research argues that the NGOs, the CBOs, and other grass root organizations must work together to address the primary concerns of the slum population.

Further, it is advocated that primarily, public institutions such as municipal organizations can play a vital role in settling many of the basic issues faced by the urban poor in slums. For a long time, these municipal bodies are aware of the movement, settlement, and displacement of slums. And they are the only governing bodies that can fully understand and devise a solution for the slums. Much before underlying the accountabilities of the UN and its agencies, the local governing bodies need to revamp their facilities and policies to solve the core human rights concerns of the urban poor.<sup>18</sup>

## **E. WAY FORWARD**

Poverty is widely regarded as a crime by human rights advocates. It is a fact that the people who are facing this challenge are helpless on their own. The saddest part of the problem is that the urban poor are not capable of fighting this battle alone. Truly speaking, it is not their struggle, it is a human challenge that must be addressed by all of us.

Urban localities, all over the world, have become a magnet for the poor to look for a better life and settlement which they hardly can attain in their life. Despite realizing this reality, the flow of migration to the urban centres has never stopped so far. And the result is either the dislocation of them or their persistent fight for fundamental rights.

Ab initio, no urban locality can accommodate or feed an added group of people unless the Government or other civil rights organizations create some avenues for their employment and settlement. And for decades, this has not happened in the majority of the cities wherein slum dwellers have been living.

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17 UN-Habitat, *Slum Upgrading*, UN-HABITAT, <https://unhabitat.org/topic/slum-upgrading> (last visited Nov. 02, 2022).

18 Laura B. Nolan, *Slum Definitions in Urban India: Implications for the Measurement of Health Inequalities*, 1 POPUL DEV REV 41, 59-84 (2015).

They have indeed been constantly working and contributing to the development and welfare of the rest of the people. But then when it comes to sharing basic facilities and making basic rights available to them, cities and their inhabitants have not been able to help the urban poor. And at the heart of this issue, the civic administration is miserably failing to address the core concerns of the slum dwellers.

Therefore, the 'slum challenge' continues and it is going to be an integral part of city life in the days to come.<sup>19</sup> Facilitating the urban poor in reclaiming their universal human rights does not cost any segment of society or humanity, only it demands reimagining and rethinking our policy perspectives and accordingly, designing an urgent action plan. And the time has come for this act.

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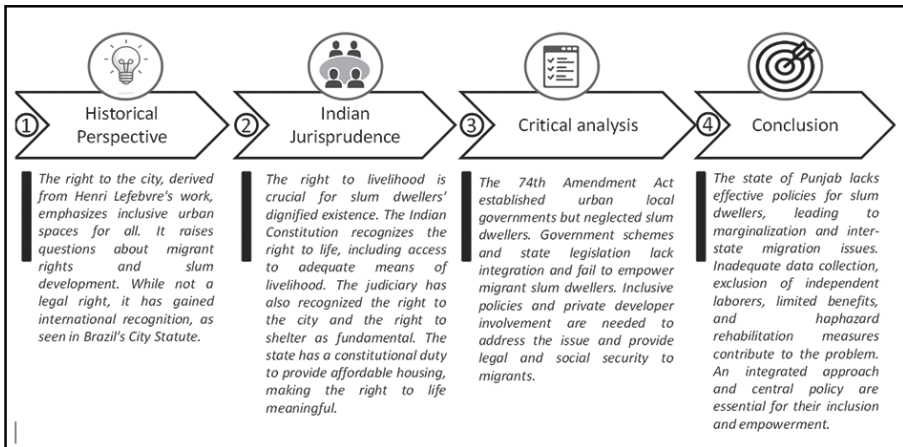
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19 CITIES ALLIANCE, THE CHALLENGE OF SLUMS – AN OVERVIEW OF PAST APPROACHES TO TACKLE IT 8 (2021).



## RIGHT TO CITY: A RESPONSE ASSESSMENT OF THE STATUS QUO OF SLUMS IN THE STATE OF PUNJAB

*Dr. Ishita Sharma\* & Dr. Shiva Satish Sharda\*\**



### *Abstract*

The article explores the state of slums in Punjab and analyzes the concept of the right to the city in India. The authors highlight the global prevalence of slums and the challenges they pose to achieving Sustainable Development Goal 11. They argue that slums, which are often neglected and marginalized, represent the urbanization of poverty and lack basic provisions for human habitation. The article delves into the legal and conceptual frameworks surrounding slums and the right to the city. It discusses the absence of a statutory definition of slums in India, relying on the Census of India's definition for reference. The authors then explore the historical and philosophical perspectives of the right to the city, emphasizing the need for inclusive urban spaces that address the specific needs of slum dwellers.

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The Indian judiciary's jurisprudence on the right to the city is examined, highlighting the intertwining of the right to livelihood with the right to life. Landmark cases and constitutional provisions are cited to support the recognition of the right to appropriate housing and the importance of ensuring dignified living conditions for slum dwellers. The authors also draw parallels with international examples, such as the City Statute of Brazil and the New Urban Agenda. The article concludes with an analysis of the management of slums and slum dwellers, particularly focusing on interstate migrant workers who form a significant portion of the slum population in Punjab. The authors propose the establishment of a Slum Development Authority in Punjab, like those in other states, to document and uplift the residents of slum areas. They argue that this would align with Article 21 of the Indian Constitution, which guarantees the right to life with dignity.

**Keywords:** Right to city, Slum Rehabilitation, Article 21, Right to life with dignity, Sustainable Development Goals, Punjab.

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- A. Introduction
- B. Right to City: Historical and Philosophical Perspective
- C. Indian Jurisprudence on Right to City
- D. Critical Analysis of Slum Rehabilitation Endeavors in the State of Punjab
- E. Way Forward

## **A. INTRODUCTION**

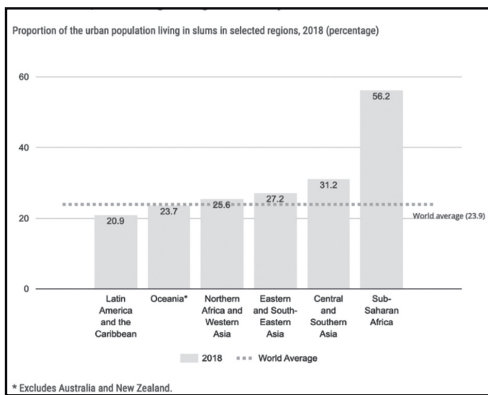
According to the latest World Bank estimates, roughly 56% of the global population resides in cities, amounting to 4.4 billion of the global populace.<sup>1</sup> These figures have no chance of declining soon, with predictions of its spike to twice the current rate, leading to approximately 7 out of 10 individuals residing in cities.<sup>2</sup> The current Covid-19 pandemic has further exposed the flaws of

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1 The World Bank, *Urban Development*, THE WORLD BANK, <https://www.worldbank.org/en/topic/urbandevelopment/overview> (last visited Nov. 28, 2022).

2 World Health Organization (WHO), *Ageing and Health*, WORLD HEALTH ORGANIZATION (Oct. 01, 2022), <https://www.who.int/news-room/fact-sheets/detail/ageing-and-health>.

its social security indices such as affordable housing, crumbling public health infrastructure, and inadequate public utility services such as water, sanitation, and waste management. The fast-paced and vogueish portrayal of contemporary cities enclaves a veil on the underbelly that is the silent driver of its drudgeries. This underbelly mushrooming through vast expanses of slum areas is the new invisible strata of the urban society, recklessly ignored and mired in depravity. The above-mentioned figures highlight the sordid state of affairs, and progress in the implementation of Sustainable Development Goal 11<sup>3</sup> (hereinafter referred to as SDG) which talks of cities and human settlements as centres of sustainable and resilient communities. According to the United Nations, Department of Economics and Social Affairs, Statistics Division, the following graph portrays the percentage of the global population, region-wise, living in slums.<sup>4</sup>



The words of Anna Tibaijuka in the chapter Poverty and Urban Agenda, published in the Annual Report of 2005 released every year by the United Nations Development Programme's International Policy Centre for Inclusive Policy Growth, deserve mention here<sup>5</sup>:

*Informal Economy, which can be more precisely verbized, as slums are a glaring instance of the phenomena of urbanization of poverty. The saddest part is that these dwellings which serve multiple purposes ranging from residential to economic, are not legally recognized as houses, implying that they cannot be insured or used as collaterals. Thus, the entire investment of an urban poor individual has no economic value.*

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3 United Nations Development Programme, *The SDGs In Action*, UNITED NATIONS DEVELOPMENT PROGRAMME, <https://www.undp.org/sustainable-development-goals> (last visited Mar. 02, 2023).

4 United Nations Statistics Division, *SDG 11: Sustainable Cities and Communities – Make Cities and Human Settlement Inclusive, Safe, Resilient and Sustainable*, UNITED NATIONS STATISTICS DIVISION, <https://unstats.un.org/sdgs/report/2021/goal-11/> (last visited Mar. 02, 2023).

5 INTERNATIONAL POVERTY CENTRE & UNDP, *POVERTY IN FOCUS 1–24* (2005).

These words raise several pertinent issues about *slums*. At an international level, the word slum has been defined by the UN-Habitat as<sup>6</sup>:

A group of individuals living under the same roof with a lack of basic provisioning services such as water, sanitation, space, quality of the roof over the head and security of tenure.

As far as India is concerned, no statute defines the word slums. The official definition of the word slum is given by the Census of India as<sup>7</sup>:

A Slum, for Census, has been defined 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 Constitution of India secures the rights of the citizen to choose their place of residence with reasonable restrictions. The Term 'Right to City' encompasses the notion of participation with access to social security systems that come along with residential access. The right to the city implies something more than access to its assets. It proposes that individuals, especially the marginalised not just reserve the privilege to reside in a city, but also the option to customise, reshape and change it. However, people especially interstate migrants living in slums represent the flip side of the facilities underneath 'right to the city'. Lack of dwelling space and limited access to drinking water facilities, sanitization, health care, education, and nutrition underlines the demographic divide within the city. Inter-state relocation in India is firmly connected to the pace and extent of geographical changes and disparate advancement of rural and metropolitan regions, which influence the organic market for work in various areas. India's 2011 census data shows an enormous expansion in the transient populace

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6 EDUARDO L MORENO, *SLUMS OF THE WORLD: THE FACE OF URBAN POVERTY IN THE NEW MILLENNIUM: MONITORING THE MILLENNIUM DEVELOPMENT GOAL, TARGET 11 – WORLD WIDE SLUM DWELLER ESTIMATION* (2003).

7 C Chandramouli, *Housing Stock, Amenities & Assets in Slums – Census 2011*, <https://censusindia.gov.in/nada/index.php/catalog/42602/download/46252/Census%20of%20India%202011-Housing%20Stock%2C%20Amenities%20%20%20Assets%20In%20Slums.pdf>.

from 309.4 million in 2001 to 449.9 million in 2011. Across state limits, the number went from 41.17 million to 54.26 million over the same time frame.

Punjab being an urbanized state is one of the most favoured destinations for interstate migrants in India. The authors have in this section put forth that the word slum has nowhere been defined in any statute in India, for calibration, reliance is placed on the definition given by the Census of India. In the second section of the article, the authors examine the historical as well as philosophical perspectives on the Right to the city (hereinafter referred to as RTTC). In the third section of the article, the authors examine the jurisprudence of the courts on RTTC. Furthermore, in the fourth section, the authors have analysed the glaring loopholes in the management of slums as well as slum dwellers, specifically the interstate migrant workers who form most of the slum-dwelling population, with special reference to the state of Punjab. Finally, the authors argue for the creation of a Slum Development Authority in the state of Punjab on the lines of Slum Development Authorities in other states such as Maharashtra, so that the residents of these areas are documented, and do not have to spend their lives as the faceless informal section of the city, to the chagrin of Article 21 of the Indian Constitution.

## **B. RIGHT TO CITY: A HISTORICAL AND PHILOSOPHICAL PERSPECTIVE**

Before delving into the noted work of the French philosopher, Henri Lefebvre, *Le Droit à la ville*, wherein the term right to city was crafted,<sup>8</sup> it is essential to know the philosophical basis of the same, which again can be traced to another pioneering work of Lefebvre, '*The Production of Space*'.<sup>9</sup> Herein, Lefebvre conceptualises space, not merely as a manifestation of an abstract ideology or an idea, but as a territory which has value, and meaning, is socially constructed, and whose use seeps the benefits to all the sections of society in a constructive

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8 Mathew Idiculla, *Recognising the Right to the City*, INDIA TOGETHER (Apr. 08, 2021), <https://indiatogether.org/right-city-laws>.

9 Andrzej Zieleniec, *The Right to Write the City: Lefebvre And Graffiti*, 10 URBAN ENVIRONMENT (2016).



manner. Spatial usage is largely a social construct, depending upon the unique as well as differential needs of society.

The words of sociologist Robert Park deserve mention here.<sup>10</sup> He states that the efforts of mankind have always been channelised towards improving the world he/she lives in. The same has been manifested through the creation of cities. He further goes on to say, the current cities are a sorry state of affairs, which is also a reflection of man's ethos and values.<sup>11</sup> Thus, the words of Robert Park, are indicative of the fact that RTTC is not merely accessibility of resources or achievement of highest standards of development. It implies the creation of spaces, wherein control over the distribution of surplus is not in a few hands.<sup>12</sup> The contemporary cities are a spatial agglomeration, with an explosion of slums, within their belly. RTTC essentially talks of inclusivity, but at the same time, certain dimensions of exclusion need to be taken into consideration about the same. Exclusion, concerning equitable access to resources, as far as the burgeoning migrant population, in the slum areas is concerned.<sup>13</sup>

The philosophical basis of RTTC is the creation of an urban space that gives a face to the faceless, the invisible strata of the society constituted by the migrant workforce, who are engaged in jobs, which though constitute a substantial portion of unskilled manual labour, is the prime driver of the urban capitalism. The basic philosophical as well as moral questions that arise in the context of the right to city are:-

- Whether the migrants have a '*Right to city*'?
- Whether the receiving city responsible for ensuring the integration and mainstreaming of this populace?
- What are the various reasons for the underdevelopment of slum dwellers?

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10 Joseph Bensman, *Robert E. Park, On Social Control and Collective Behaviour: Selected Papers*, 47 SOCIAL FORCES 90 (1968).

11 *Id.*

12 David Harvey, *The Right to the City*, <https://davidharvey.org/media/righttothecity.pdf> (last visited June 25, 2023).

13 UNESCO, URBAN POLICIES AND THE RIGHT TO THE CITY IN INDIA: RIGHTS, RESPONSIBILITIES AND CITIZENSHIP (2011), [https://horizon.documentation.ird.fr/exl-doc/pleins\\_textes/divers20-12/010054550.pdf](https://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers20-12/010054550.pdf).

- What are the drawbacks of different legislations relating to the upliftment of the slum dwellers?

The answers to these questions shall be dealt with by the authors comprehensively, in the subsequent parts of the paper. Now, after a philosophical conceptualisation of RTTC, tracing the historical trajectory of RTTC becomes essential for a better understanding of the concept. As far as the RTTC is concerned, it is not a legal right, in terms of the positivist school.<sup>14</sup> There is no international legal instrument that advocates for RTTC. RTTC achieved international recognition, through global momentum wherein it manifested in different forms in different countries around the world. For instance, Brazil's City Statute of 2001 has its roots in Article 182 and Article 183 of the Brazilian Constitution, which guarantees the solidarity right of holistic use of land.<sup>15</sup> The City Statute provides for equitable ownership of property through collectivisation, guarantee of proprietary rights as well as participatory governance through the inclusion of all stakeholders.<sup>16</sup>

Constitutional recognition of RTTC has been given by the Constitution of Ecuador through Article 31.<sup>17</sup> RTTC was the focus of the New Urban Agenda at the United Nations Conference on Housing and Sustainable Urban Development (hereinafter referred to as Habitat III).<sup>18</sup> The major thematic areas dealt with at the conference were:

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<sup>14</sup> *Id.* at 12.

<sup>15</sup> Ngai Pindell, *Finding a Right to the City: Exploring Property and Community in Brazil and in the United States*, 39 VANDERBILT LAW REVIEW 435 (2021).

<sup>16</sup> Mathew Idiculla, *A Right to the Indian City? Legal and Political Claims over Housing and Urban Space in India*, 16 SOCIO-LEGAL REVIEW 1–25 (2020).

<sup>17</sup> ECUADOR CONST. art. 31.

<sup>18</sup> UNITED NATIONS CONFERENCE ON HOUSING AND SUSTAINABLE DEVELOPMENT, [www.habitat3.org](http://www.habitat3.org) (last visited Dec 1, 2022).

| <b>Urban spatial strategies</b>  | <b>Urban governance</b>   | <b>Urban economy</b>   | <b>Social aspects</b>  | <b>Urban environment</b>  |
|--|---|--|--|---|
| Access for all to the resources and opportunities of city life   | Access for all to transparent and inclusive urban governance  | Economic rights as a core component of the right to the city   | Right to safety, security, and well-being  | Access for all to resilient cities encompassing biodiverse and unpolluted urban environments  |
| Spatial strategies and urban planning practices have a profound impact on people's experience of city life and on social integration and inclusion. <sup>2</sup> Participatory planning can prioritize environmentally just and socially inclusive urban development, and respond to the needs for shelter, livelihoods, and urban services of the vulnerable and marginalized people. Improved access to public space, transport, and green environments can foster cultural diversity, integration, and urban resilience. Urban planning could benefit the urban poor in zones of poverty and informal settlements by celebrating the vibrant mixed-use areas as vital contributions to urban housing, economies, and services | The right to the city recognizes the role of inhabitants in participating to shape the city, and a city constituted as a local political community that ensures adequate living conditions and peaceful coexistence between peoples and the government. Part of this recognition goes beyond ensuring free and fair local government elections, <sup>3</sup> and entails the meaningful participation of people in the governance processes of a city. The right to the city recognizes the value of disagreement and debate, and enjoins all with the task of collectively shaping and making the city. <sup>4</sup> In this context local government has a central role in the promotion, protection, and guarantee of human rights in the city | The realization of the right to the city as a concept that recognizes the dignity of every human being is dependent on each and every person's ability to enjoy the economic opportunities that cities have to offer. Yet the current trend toward increased concentration of income, resources, and power in cities has left large segments of the population excluded from the rewards and benefits of growth. <sup>5</sup> Worldwide, 1.5 billion people currently live in multidimensional poverty. <sup>6</sup> And many of them are employed: the International Labour Organization estimates that one third of all workers — around 839 million — cannot earn enough to lift themselves and their families out of poverty | The social aspect of the right to the city locates people and communities in society. <sup>7</sup> It highlights identity and heritage along with gender, youth, ageing, disability, migration, and refugee status. It encompasses issues of culture, neighbouring, and stakeholding. This focus is premised on the view that human interaction and/or social exchange are critical for embracing the complexity and contestations of urban life and for its socially sustainable organization and management. <sup>8</sup> The social aspect appreciates that the question of identity has become challenging and requires new collective responses. It recognizes that the promotion of social integration, harmony, and cohesion are important values, which are played out in the social arena | Right to the city approach has a comprehensive understanding of the key role that protection of biodiversity and natural resources in every urban settlement will have, in the near future, to face the growing challenges produced by the climate change, to manage city pollution, and to create the appropriate conditions for the living. To do this, ecological, geographical, geological, and climate conditions of each urban environment should be considered as remarkable attributes and taken into account when planning the cities. This approach should include landscape design, storm water management, soil quality, environmental restoration, green infrastructure, and territorial matters as aspects that do affect the right to the city |

Apart from the Habitat III conference, there have been several other initiatives about RTTC such as the World Charter on Right to City (2005) as well as the Global Charter Agenda for Human Rights in the city (2011).<sup>19</sup> Thus, RTTC is an agglomeration of ethical as well as social values to create a just and equitable urban space, a spatial distribution that is based on community development, a manifestation of space, not as an abstract idea but a value system that is just, open the needs of all the sections of the society, addresses the moral as well as legal issues involved.

## C. INDIAN JURISPRUDENCE ON THE RIGHT TO CITY

A dignified existence is the core of all human values. The same is ensured through sustainable and adequate means of livelihood. An adequate and reliable means of livelihood is the key to social security and a panacea for social evils. However, the same is highly volatile when it comes to slum dwellers. Slum Dwellers, who form the faceless strata of the urban spaces are engaged in menial jobs such as rickshaw pullers, construction workers, domestic workers, street vending, roadside hawkers etc. which despite being menial are the primary level economic workforce of these urban spaces. These are the drivers of the forces of capitalism

19 *Id.*

in the urban spaces and a reflection of the *urbanisation of poverty*. There is an explicit recognition of the right to life under the Indian Constitution. However, the judiciary has intertwined it with the right to livelihood.

In *Ajay Makan v. Union of India*,<sup>20</sup> the right to the city has been recognised by the Judiciary. The fundamental tenets of liberty, fraternity, equality, and justice form the foundation of the Indian Constitution. The Constitution's Fundamental Rights and Directive Principles include the right to appropriate housing, even if it isn't stated directly as a human right. RTTC also resonates with the Fundamental Rights under Part III of the Constitution of India. Indian Constitution recognises the right of every citizen to reside and settle in any part of the country.<sup>21</sup> This freedom has been subject to the protection of persons living in tribal areas. Also, the states are directed to cater to ensure the equality of the opportunity to earn a livelihood, humane work conditions, and increase the standard of living to improve public health.

To substantiate its stance, the Supreme Court referred to the case of *Ain o Salish Kendra (ASK) v. Government of Bangladesh*<sup>22</sup> wherein the Supreme Court of Bangladesh intertwined the right to life with the right to adequate means of livelihood and protected the rights of the slum dwellers of Dhaka city. Furthermore, The Supreme Court of India has ruled in several decisions that the right to appropriate housing is a fundamental freedom that flows from the guarantee of life in Article 21 of the Indian Constitution ("No person shall be deprived of his life or personal liberty except according to procedure established by law"). The connection between the right to housing and the right to life, as guaranteed by Article 21, has been made evident in several significant court decisions.

Moreover, the right to shelter includes not only the right to a roof over one's head but also the right to all the facilities required for one to survive and grow as a person. When employed as a prerequisite to the right to exist, the right to

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20 *Ajay Makan v. Union of India*, W.P.(C) No. 11616/2015.

21 INDIA CONST. art. 21.

22 *Ain o Salish Kendra (ASK) v. Government of Bangladesh*, 19 BLD (1999) 488.

shelter shall be regarded as having been protected as a basic right. Therefore, a lack of a good place to live undermines the constitutionally protected rights to equality, economic fairness, a basic right to a place to live, human dignity, and the right to life.<sup>23</sup> The state must build cheap housing for the needy, according to the Supreme Court's 1990 ruling in the case *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*<sup>24</sup> in which it was held that "The State has the constitutional duty to provide shelter to make the right to life meaningful."

## **D. CRITICAL ANALYSIS OF SLUM REHABILITATION ENDEAVOURS IN THE STATE OF PUNJAB**

The 74th Constitutional Amendment Act of 1992 established the Municipalities or Urban Local Governments system as a constitutional entity in as Part IX A. The Constitutional bodies have hardly catered for marginalized slum dwellers in terms of quality living and overall development. Moreover, the elected representatives of these bodies are mostly overshadowed by bureaucratic control. This is due to the lack of inclusive policies due to which the slum dwellers have been further pushed to the margins which is adversely affecting their claim to 'right to city.'

While assessing the response to the enormity of the problems of the people living in slums, it is pertinent to decipher the legislative and policy endeavours of the central and various state governments. The Central government passed Slum Areas (Improvement and Clearance) Act in 1956. The act also accorded the protection of tenants in such areas from eviction. However, on account of its applicability in Union Territories alone the Central level slum identification and rehabilitation authority could not have been perceived shortly. Moreover, different schemes for rehabilitation and affordable housing have also been floated by the central government; which could be summarized as under:

- Initiated in 1996, the **NATIONAL SLUM DEVELOPMENT PROGRAMME (NSDP)** offered loans and subsidies to states for slum rehabilitation projects based on the proportion of their urban slum population.

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23 Sudama Singh v. Govt. of Delhi, W.P (C) 8904/2009.

24 Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, AIR 1997 SC 152.

- The **NIRMAL BHARAT ABHIYAN** (NBA) program's Valmiki Ambedkar Malina Basti Awas Yojana (VAMBAY) initiative was launched in 2001 with an emphasis on providing housing for urban disadvantaged people.
- The Jawaharlal Nehru National Urban Renewal Mission included **BASIC SERVICES TO THE URBAN POOR** (BSUP) BSUP as a key component (JNNURM). BSUP sought to give basic services to the urban poor in 63 of India's most populous cities.
- The **INTEGRATED HOUSING & SLUM DEVELOPMENT PROGRAMME** (IHSDP) was introduced by the Government of India by combining the NSDP and VAMBAY schemes. The program's goal is to give slum inhabitants in metropolitan areas decent shelter and access to essential infrastructure.
- The **INTEREST SUBSIDY SCHEME FOR URBAN POOR HOUSING** (ISHUP): The Plan calls for giving low-income and economically disadvantaged populations interest subsidies so they can purchase or build homes.
- **RAJIV AWAS YOJANA** (RAY): Introduced in 2013, the programme aimed to address the failures of the formal system that led to the development of slums; bring existing slums into the formal system and enable them to access the same level of basic amenities as the rest of the town and address the shortages of urban land and housing that keep shelter out of the reach of the urban poor.
- **HOUSING FOR ALL** (Urban): The Pradhan Mantri Awas Yojana launched in 2015 aims to give central support to implementing organizations working through States and UTs so that all beneficiaries can have homes by 2022.

After the analysis of the characteristics of the NSDP, BSUP and Housing for All, it has been observed that three previous federal programmes in India and *in-situ* slum rehabilitation strategies, offer more benefits than previous policies, according to literature analyses and qualitative interviews.<sup>25</sup> Also, the schemes have a restricted implementation as no direct reference to the upgradation of slums was purported to be taken off through an integrated mode. Much of the task as to identification, declaration, and sensitisation about the benefits and

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25 Michelle Hindman, et al., *Addressing Slum Redevelopment Issues in India*, UNIVERSITY OF MICHIGAN <https://graham.umich.edu/media/files/dow/Dow-Masters-2015-Slum-Redevelopment-India.pdf> (last Dec. 11, 2022).

schemes had been left to the state Government's qua local bodies. This lack of integration, co-ordination and social auditing for the collection of data has a significant contribution to the maintenance of the status quo of the slums.

Further, Punjab is one of the urbanised states and receives a larger influx of migrants every year. Furthermore, it has been observed that despite statutory protection in the form of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Punjab Slum Areas (Improvement and Clearance) Act, 1961 and The Punjab Slum Dwellers (Proprietary Rights) Act, 2020, no significant step has been taken to ensure the empowerment of interstate migrants living in slums. To add to this conundrum when the question about migrant labourers' welfare and the state-wise record was raised before the parliament at the onset of the first lockdown, the Government was in a predicament over the issue and it was mentioned on record that no such data was available.<sup>26</sup>

The recently passed legislation in the Legislative Assembly of Punjab was conceived to alter urban slum regions, fostering sustainable urban growth, and demonstrating significant improvement in meeting the requirements of slum inhabitants. However, the legislation suffers some major implementation issues as no minimum period of previous stay has been specified to claim the proprietary rights on the dwelling space as every slum HH, occupying land in a slum in any urban area on the date of notification of PSD Act, 2020, i.e. 1st April 2020, may be considered under the scheme.<sup>27</sup> When a similar provision is compared with the 2012 legislation of the state of Jammu and Kashmir, it prescribes that the claimant should be a permanent resident of the state immediately before claiming the proprietary rights. Moreover, the latest addition in the law i.e., the state of Himachal Pradesh has notified the enactment in 2022. This Act specifies the eligibility of beneficiaries as on 21<sup>st</sup> February 1974.

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26 Government of India, Ministry of Labour and Employment <http://164.100.24.220/loksabhaquestions/annex/173/AU4621.pdf> (last visited Dec. 21, 2022).

27 Chief Ministers' Slum Development Programme, *Frequently Asked Questions*, CPR INDIA <https://cprindia.org/wp-content/uploads/2022/04/Frequently-Asked-Questions-FAQs-for-BASERA.pdf> (last visited Dec. 1, 2022).



The availability of data and record about slum-dwelling interstate migrant women in such circumstances is least expected. This segment is looking for the ascertainment of upgradation and modernization of their inhabitations wherein a more secure and progressive ecosystem is created around them. This argument could be further strengthened by mandating private developers' involvement in "in-situ" slum redevelopment using land as a resource. By offering houses to suitable slum inhabitants, this strategy to integrate them into the formal urban settlement by utilizing the untapped potential of land underneath slums could substantially help to sort out this issue. Additionally, it has been observed that in India, approaches and projects have generally been insufficient in giving any type of lawful or social security to transients. Guidelines and authoritative methods prohibit migrants from getting to social security and the versatility of privileges is restricted. Migrant Labourers need legal portrayal, sufficient lodging and fundamental framework, legitimate wages and professional stability, combination with metropolitan standard work market, admittance to well-being and education.

## **E. WAY FORWARD**

It could be safely appended that the present policies of the State of Punjab have not been oriented towards the amelioration of the slum dwellers. The stance of inter-state migration is apt to prove that this trend is not going to recline in the near future. This sect of society is compelled to live on the margins on account of the failure of the state government to make integrated policies for them. Needless to mention access to school and vocational training is a distant dream for many. They are often seen selling meagre products to escape from penalties under the prohibition of beggary legislation. In this backdrop, the following observations could be forwarded:

- The local bodies in the state of Punjab have not established an orderly periodical mechanism to collect the data of slum dwellers which makes it challenging to map their movement.
- As has been mentioned in the paper, the non-recognition of independent labourers as migrant labourers exclude a major chunk from the benefits under the Inter-State Migrant Labourers Act 1979.

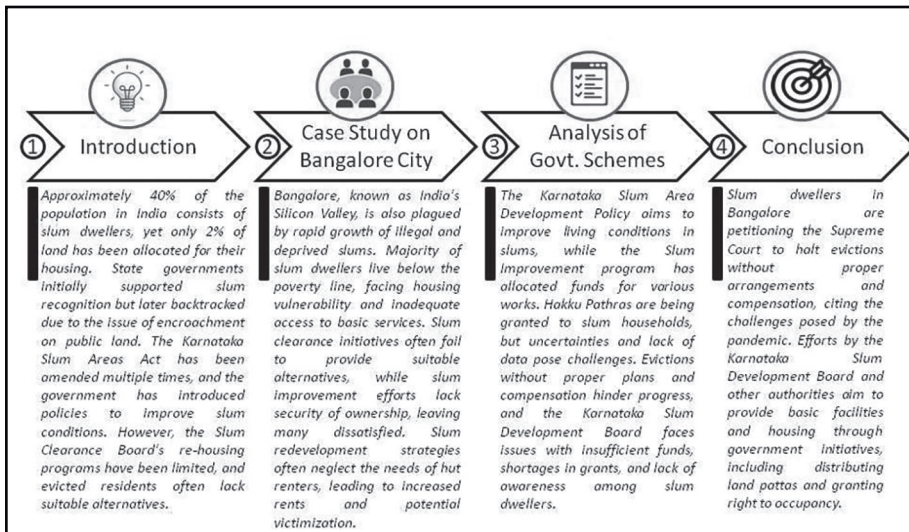


- Even for the included labourers, a limit of Rs 500 per men sum seems a satire on the plight of these marginalised classes.
- There is no comprehensive plan for the use of land as a rehabilitation resource, conversely, proprietary rights have been haphazardly accorded, adding to congestion in the city.
- As far as rehabilitation is concerned, these people would be sent to a rural location on the outskirts of the city, where there would be little opportunity for them to get acceptable transportation to get into the city.
- Moreover, the proposed Social Security Code, 2020 encompasses the establishment of a two-tier collection of data; both at the centre and state levels. The basic challenge with the implementation of this code is the lack of political will to notify this code. The online requirement of Aadhar validation of the status of inter-state migrant workmen seems ineffective. Most of these workmen may not be familiar with the technical nature of receiving OTP for registration.
- Shramik registration portal of the government of India seems promising for data collection. However, it fails to provide employment security as several other schemes propose payment of monthly pensions to these unorganised sector workers on the payment of a stipulated monthly amount for a minimum of 20 years.

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# STUDY ON ACTIONS OF THE KARNATAKA SLUM DEVELOPMENT BOARDS FOR BETTERMENT OF SLUM DWELLERS: WITH SPECIAL REFERENCE TO BANGALORE CITY

*Dr. Chandrakanthi L\* & Pratibha S. Hiremath\*\**



## Abstract

Accepting the fact that slum growth is an effect of urbanization is one that has been known for millennia. Economic growth is facilitated by urbanization because it is impossible to envision economic expansion without labor. The issue of the floating population needs to be addressed from all angles. Around 60 million more individuals lived in slums between 2000 and 2010, bringing the total number of slum dwellers to an estimated 860 million. In urban Indian families, 200 million people were estimated to live in slums in 2011. As a result, in the context of

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India, we want data with a high level of granularity. Sadly, there is a dearth of extremely detailed information on the scale of individual slums. According to the World Development Report (1994), the primary cause of slum growth in India is a lack of infrastructure and the composition of the population living under the poverty line has shown that the number of people living in slums has increased. However, the growth of slums cannot be visualized as the product of poverty alone; rather, several other factors are responsible for the growth of slums. The Indian government has started a new plan to combat poverty and the rise of slums in metropolitan areas.<sup>1</sup>

Thus, the present paper focuses on the study of the protection of slum dwellers in Bangalore and the initiatives taken by the Karnataka Slum Development Board and the Government. Special attention is given to the social situation of slum dwellers in the wider urban society.<sup>2</sup> The main objective of this article is to examine the laws relating to slums in Karnataka and to know the efficiency of the Karnataka Slum Development Board in addressing slum dwellers issues, especially in Bangalore.

**Keywords:** Slum development, Karnataka, Poverty, Bangalore.

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- A. Introduction
- B. Case Study on Bangalore City
- C. Government Policies, Initiatives and Schemes
- D. Critical Analysis of the Schemes for the Development of Slum Dwellers
- E. Way Forward

## **A. INTRODUCTION**

It is said that around 40% of the population consists of slum dwellers, but just 2% of the land for housing has been set aside for them by the government. After demanding that slums be recognized, state governments in many states started to backpedal. The issue of encroachment on public property is brought on by the lack of adequate land and allocation in the master plan.

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1 MARGARET ANTONY & G. MAHESWARAN, SOCIAL SEGREGATION AND SLUMS: THE PLIGHT OF DALITS IN THE SLUMS OF DELHI (2002).

2 HANS SHENK, LIVING IN INDIA'S SLUMS: A CASE STUDY OF BANGALORE (2001).

The lack of adequate land allotment in the master plan gives rise to the problem of encroachment on public land. Individual landowners are not jeopardized by encroachment. Then there is the question of how to deal with infringing on public or government land, especially when upsetting such a large population raises a slew of legal difficulties. Land surveillance is a challenging undertaking, and with limited public resources, it is difficult to track and safeguard.<sup>3</sup>

Karnataka Slum Areas (Improvement and Clearance) Act, 1973 was said to be amended in 1975 and after the passing of Karnataka Slum Areas (Improvement and Clearance) Bill, 1981. It was again said to be amended in 2002 as Karnataka Slum Areas (Improvement and Clearance) and Certain Other Laws (Amendment) Act, 2002 and in 2004.<sup>4</sup> Section 3 of the Karnataka Slum Areas (Improvement and Clearance) Act, 1973 speaks about the declaration of Slum areas.

The Law Commission's 138th report on "Legislative Protection for Pavement and Slum Dwellers," delivered to the Law Minister on December 20, 1990, vide no. D.O.No. 6(3)(12)/90-LC(LS), clearly shown a predisposition towards Slum Dwellers.

For the urban planning development of slums, the government has introduced Karnataka Slum Area Development Policy, 2016<sup>5</sup> to improve conditions of urban life of residents in slum areas, such as access to mainstream the slum itself into the city as a vibrant and basic service, including housing and possibilities of socio-economic development, and an inclusive neighborhood.

The Slum Clearance Board (SCB) was formed around 1975, but it did not begin re-housing programs until 1981, to separate them from slum improvement initiatives. Between 1981 to 1991, the SCB supplied about 92 housing units in Bangalore or around 210 per year. House development, for example, replaced

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3 Anil Nimesh, *Legal Framework to Handle Slum Development and Related Issues in India*, INDIAN LAW WATCH (Apr. 9, 2021), <https://indianlawwatch.com/practice/legal-framework-to-handle-slum-development-and-related-issues-in-india/>.

4 Karnataka Slum Areas (Improvement and Clearance) (Amendment) Act, 2004.

5 The Karnataka Slum Areas Development Policy, 2016 <https://swastikharish.com/2021/05/15/the-karnataka-slum-areas-development-policy-2016/> (last visited on Apr. 1, 2023).

tents in 15 slums. The SCB has around 2,500 dwellings under construction as of the end of 1992, with a portion of them designated for general allocation to qualified slum residents. Part of the dwellings in a huge new residential development on the northwestern outskirts (Laggeri) has been allotted to slum inhabitants. Often, the number of homes (or even 2-3 story apartment buildings) that might be built on the slum land could not fit all the listed households. The SCB's building efforts are sponsored to the tune of 80% by low-interest grants from the National Urban and Housing Development Corporation and extra Karnataka State funds. The tenants pay a monthly fee of Rs. 150 to Rs. 200 for a term of 20 years where these payments look to be prohibitively expensive for several of the re-home dwellers. An SCB study in Venkateshnagar slum revealed that 54% of households earned less than Rs. 600 per month, with the remaining 29% earning between Rs. 600 and Rs. 900.

The Karnataka Slum Development Board has consistently stated its inclination for slum clearance in conjunction with the construction of single-story row homes or multi-story (up to 3 or 4 floors) tenements. Slum renovation was viewed as a temporary 'relief' solution that should not be used in place of the ultimate goal of removing slums from the metropolitan area and preventing new ones from forming. However, the Karnataka Slum Development Board has primarily limited itself to slum improvement techniques. Furthermore, the Karnataka Slum Development Board and Bangalore Development Authority are all involved in cleaning 'unauthorized' slums without providing evicted residents with adequate alternatives.<sup>6</sup>

## **B. CASE STUDY ON BANGALORE CITY**

**BACKGROUND OF BANGALORE SLUMS:** Bangalore, the center of Indian information technology and the fifth-largest metropolitan in India by population (8.40 million as of the 2011 Census) is known across the world as Silicon Valley. Illegal and deprived living areas have increased rapidly all around the world with problems becoming more complex. Despite its image as a prosperous city,

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6 BAKSHI D. SINHA, SOCIO-ECONOMIC FACILITIES TO SLUM DWELLERS (1987).

the case of Bangalore in India is no different. Physical deficiencies, economic exploitation, and social degradation are becoming increasingly visible.

Only 22% of slum dwellers have a monthly income of less than Rs. 3000, while 76% of slum dwellers live below the poverty line. Housing has become the most vulnerable situation, with around 14% still living in kutcha homes, 42% living in semi-pucca houses, and the remaining 45% living in pucca houses. 42 percent of families rely on public taps, 18 percent are deprived of access to water, and just 40 percent have individual taps connection. Twenty-seven percent of households lack sewer connections and rely mostly on communal toilets; nevertheless, 6% still practice open defecation, and 63 percent have accessibility to stormwater drains.

**CLEARANCE OF UN-NOTIFIED SLUMS:** According to their stated objectives, the Karnataka Slum Development Board, Bangalore City Corporation (BCC), and Bangalore Development Authority (BDA) periodically destroy ‘unauthorized’ slums. In essence, this position differs from the challenges encountered by the poorest and most vulnerable slum residents who believe they will be unable to pay monthly rentals in re-housing schemes, or who hadn’t been assigned a dwelling unit in a re-housing project. The goal of re-housing programs is to first re-house all the slum inhabitants and thereby replace the current housing stock. The destruction of unlawful slums indicates a decrease in housing stock because most of the time, only limited measures are made to relocate residents in cleared areas.

**EXISTING SLUM REHABILITATION:** Although the Karnataka Slum Development Board’s ultimate goal is to remove slums from Bengaluru and other such cities in Karnataka, the majority of its efforts are dedicated to “slum development.” Furthermore, this effort does not intend to increase Bangalore’s housing supply, but rather to enhance current living areas. From 1975 to 1991, the Board improved 92 slums, reaching an estimated 1,08,000 slum inhabitants. It has 273 under its authority, or less than six on average every year. These data, however, are relatively worthless without some further information about the volume, type, quality, relevance, and sustainability of these improvement actions

supplied. Other considerations must be raised, such as who gains or doesn't profit from these actions. These aspects of the Karnataka Slum Development Board's slum rehabilitation initiatives and more fundamental problems about the societal character of habitat repair for those who need and are said to be entitled to it.<sup>7</sup>

**IMPROVEMENT DIMENSIONS:** The Karnataka Slum Development Board's slum improvement operations should not raise too many expectations. Slums are fundamentally subhuman dwelling environments, both physically and legally, regardless of whether they have been renovated or not. This is especially true in Bangalore, where state and local officials strictly enforce tenure land rights, hence controlling the tenure security of slum inhabitants. Slum development in Bangalore however does not contain the core condition that slum dwellers in the city demand, namely security of ownership, and hence, as per them, all these initiatives fall short.

This is not to say that land ownership is the sole way to acquire security of tenure. On the contrary, legal landownership might become such an appealing asset that poor landholders may be persuaded to sell their land for cash. The experience in Madras with slum redevelopment, including the issue of land ownership certificates (patta), revealed illegal 'sales' or subletting of homes in previous schemes in which people rented their property.<sup>8</sup>

**VICTIMS AND BENEFICIARIES:** Preferential treatment is difficult to implement as part of slum redevelopment strategies. Improvement packages' contents will be collected, and no efforts are made to bill slum residents for the improvement initiatives. As previously stated, early and ultimately cancelled World Bank-sponsored initiatives in Bengaluru would have included reimbursement of on-site investments. Such actions would almost surely result in victims, as many residents in Bangalore's slums might have found it hard to leave and abide by all monthly costs.<sup>9</sup>

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7 VANDANA DESAI, *COMMUNITY PARTICIPATION AND SLUM HOUSING* (1995).

8 AKSHAYKUMAR R. DESAI & DEVDAS PILLAI, *A PROFILE OF INDIAN SLUMS* (1972).

9 *Id.* at 5.



Evidence from several other cities indicates that hut renters are more likely to be the victim of re-housing and the slum rehabilitation efforts since they are not always identified as qualified for rehousing or must pay higher rates in better slums. Although no research on this topic has been conducted in Bangalore, the study<sup>10</sup> on renters in Bangalore slums reveal that slum redevelopment is predicted to lead to increased rents.

According to a Bangalore City Corporation study done in 15 slums, roughly 30%, a sizable fraction of Bangalore's slum inhabitants rent a house or hut and therefore potential vulnerability between tenants may not be an isolated problem. When slum inhabitants have difficulties with their living circumstances, they seldom go straight to the SCB's office or the officials of other organizations involved in slum development.

## **Slum Details**

According to the Karnataka Slum Development Board Survey (2020), the state had 2804 slum zones out of which Bangalore City contains 597 slum zones. As per estimations, the State's slum population is over 40.50 lakh people or 22.56% of the State's urban population. According to the 1973 Karnataka Slum Areas (Improvement and Clearance) Act, 2397 slums have been declared in the entire state, of which 387 are in Bangalore City alone.<sup>11</sup>

|   |        |
|---|--------|
| • Total Urban Population (2011 Census) in Lakhs           | 217.97 |
| • Total Slum Identified                                   | 2866   |
| • Total Population in Identified Slums (in Lakhs)         | 40.50  |
| • Percentage of Slum Population to Total Urban Population | 18.58  |
| • Total Number of Notified Slums (as per Act)             | 2770   |
| • Total Number of Non-Notified Slums                      | 96     |

Recently as per the Karnataka Slum Development Board survey annual report 2021-2022, the state has 2866 slum zones. Bangalore City contains 435 slum

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10 See H Sudhakara, *Role of Slum Clearance Board in Karnataka – An Assessment*, 3 SHANLAX INTERNATIONAL JOURNAL OF MANAGEMENT 90, 97 (2016).

11 KARNATAKA SLUM DEVELOPMENT BOARD, <https://ksdb.karnataka.gov.in/english> (last visited Mar. 21, 2023).



zones. As per estimations, the State's slum population is over 40.50 lakh people or 18.56% of the State's urban population. The number of slums notified in the State is 2770 and out of which Bangalore city alone is notified with 409 slums under the Karnataka Slum Areas (Improvement and Clearance) Act, 1973.<sup>12</sup>

## **C. GOVERNMENT POLICIES, INITIATIVES AND SCHEMES BY THE SLUM DEVELOPMENT BOARD FOR PROTECTION OF SLUM DWELLERS 2021 – 2022**

### **1. Karnataka Slum Area Development Policy-2016**

The policy seeks to improve conditions of urban life of residents in slum areas, such as access to basic services, including housing and possibilities of socio-economic development, and inclusive neighbourhood.

### **2. Slum Improvement (State Programme)**

A sum of Rs. 10000.00 lakhs is allotted in the revised budget for 2021-22 under Slum Improvement, and an action plan will be developed for the implementation of 87 works. Out of which Rs. 10000.00 lakhs were issued, of which Rs. 9414.38 lakhs have already been used, and 84 basic utility works have been completed in various slums by the end of March 2022.

### **3. Issuance of Hakku Pathra**

According to the Government Order, Hakku Pathras are being granted to 3.36 lakh households living in 1821 slums on property owned by the Government, Metropolitan Cities, BBMP, Municipality, City Corporation, and Town Panchayat. The distribution of Hakkupathra to recipients is underway. The Honorable Chief Minister symbolically issued Hakkupathras.<sup>13</sup>

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12 KARNATAKA SLUM DEVELOPMENT BOARD, BANGALORE, ANNUAL REPORT FOR THE YEAR 2019-20, <https://ksdb.karnataka.gov.in/info-4/Reports/Annual+Reports/en>, (last visited Mar. 21 2023).

13 *Id.*

## **D. CRITICAL ANALYSIS OF THE SCHEMES FOR THE DEVELOPMENT OF SLUM DWELLERS**

Uncertainties are especially crucial for slum dwellers who are scheduled to be re-housed since they are frequently exacerbated by a lack of data from key authorities, giving birth to various challenges. In one slum where the BCC planned to re-house residents, it was widely assumed that rentals would be approximately Rs. 200 monthly, but many speculated on the worst-case scenario, thinking they would be unable to raise this amount at all. There is a similar paucity of data on the numerous elements pertinent to potential home occupants in the SCB and BCC re-housing programs.

From the Supreme Court judgment on *Olga Tellis v. State of Bombay*<sup>14</sup> case till the recent Railway slum eviction<sup>15</sup> by the Delhi government, there has been a series of issues relating to the eviction of slum dwellers, without alternative plans and sufficient compensation, the country's eviction of slum dwellers will not move forward.

Though the Karnataka Slum Development Board Authority is functioning well with the schemes and their policies, there still exists a few slum areas where the procedure for eviction of slum dwellers is not made properly. The three major lacunae faced by the Karnataka Slum Development Board while providing the initiatives to the slum dwellers are the Housing Scheme PMY has a different unit cost but the fund provided is less in grants by the Government which is approximately Rs. 2.5lakhs only. Next, there is a shortage of the grants provided by the Government for providing the necessities to the slum dwellers as prescribed in the schemes and lastly, no grants are provided for spreading awareness regarding the slums by the Government.

Thus, schemes are very good but due to no prompt and sufficient funds by the Government for the execution of the schemes coupled with the slum

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14 *Olga Tellis v. Bombay Municipal Corporation*, 1986 AIR SC 180.

15 Abraham Thomas, *Slum Dwellers Reach SC Against Railway Slum Eviction Order, 11 Dwellers File Plea to Join as Parties*, THE HINDUSTAN TIMES (Sep. 13, 2020) <https://www.hindustantimes.com/delhi-news/slum-dwellers-reach-sc-against-railway-slum-eviction-order-11-dwellers-file-plea-to-join-as-parties/story-ZHzf5FOu22nTuh1Haf8hN.html>.

dwellers' ignorance of the government's initiatives and policies as most of them are illiterate and uneducated. Due to these reasons, the Karnataka Slum Development Board is not able to realize the objective of the schemes.

## **E. WAY FORWARD**

A set of slum dwellers aggrieved by the latest eviction order has petitioned the Supreme Court, asking to be heard before their dwellings are demolished and arguing that their relocation might jeopardize their living at a time when the epidemic has made things tough.<sup>16</sup>

As a result, the paper focuses on the total population of Bangalore, how many slums are present in Karnataka, where these poor people settled in Bangalore, and what strategy is being used by Karnataka State Slum Development Board, Bangalore City Corporation, Bangalore Development Authority, and to provide basic facilities and decent housing to these slum population.

Thus, with the requests that slum evictions in the country be halted unless alternative arrangements and suitable compensation are made, land pattas be distributed to long-term tenants of government property.<sup>17</sup> At the moment, the Karnataka state government is taking considerable steps to build apartments for these slum dwellers through several central and state government housing initiatives. The Karnataka Slum Development Board is planning to launch the Right to occupancy for individuals to become their property owners by the Indian Constitution in the 2022-23 scheme.<sup>18</sup>

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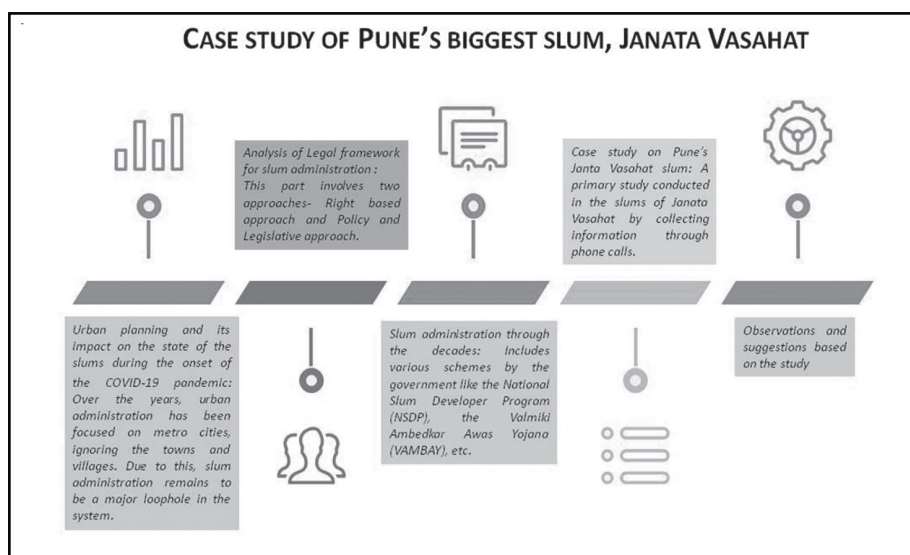
16 *Id.*

17 People's Reporter, *WB: Slum Dwellers' Conference Demands End to Evictions*, NEWS CLICK (Sept. 05, 2022), <https://www.newsclick.in/WB-Slum-Dwellers-Conference-Demands-End-Evictions>.

18 KARNATAKA SLUM DEVELOPMENT BOARD, <https://ksdb.karnataka.gov.in/english> (last visited Mar. 21, 2023).

## INCLUSIVE URBAN PLANNING WITH RESPECT TO SLUM ADMINISTRATION: CASE STUDY OF PUNE'S BIGGEST SLUM, JANATA VASAHAT

*Dr. Kshitij Naikade,\* Dr. Manika Kamthan\*\* & Dr. Shashikala Gurpur\*\*\**



### *Abstract*

Whether policymakers like it or not, the mushrooming of slums is a reality that every urban center must deal with at some point in time. Ignoring its existence is a gross violation of human rights. Urban policy planners have consistently overlooked the needs and demands of slums and such ignorance leads to perilous repercussions for the State. The socioeconomic consequences of the COVID-19 pandemic have changed the face of administrative reforms and governance principles permanently all around the

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world. Within the most severely affected countries, urban centers and metro cities are the worst hit. Within these cities, it is the slums that have emerged as the epicenter of the pandemic spread. The pandemic has shown that our urban governing bodies have fallen woefully short of rapid response to tackle such calamities in the slums. The lack of social distancing, cramped spaces, and unhygienic sanitation have amplified the problems in these slums. In the city of Pune, which was the second most affected city in the State after Mumbai, 90% of the cases had originated from the slums. Most people staying in these slums are informal sector workers dependent on daily wages. Dharavi, one of the world's largest slums was leading the charts for the highest cases in Mumbai. Hence, Slum administration and Governance are going to be the most important challenge for civic bodies in the post-COVID era.

This paper looks at effectively redrawing the priorities of civic governance based on successful models in Pune to create a blueprint for effective slum development and convert this calamity into an opportunity by studying the failure of civic bodies in stopping the spread of the pandemic in slums and congested shanties. The primary goal of the study is to analyze the effective slum administration model of Pune's biggest slum, Janata Vasahat in tackling COVID-19 effectively without taking any active assistance from the municipal bodies. This has helped the researchers draw a detailed blueprint of how community ingenuity, determination, and persistence can help tackle a disaster without waiting for active government intervention. In the long run, this paper will act as a reference point for urban planners to tackle health and medical emergencies effectively.

**Keywords:** Urban Planning, Slum Development, Human Rights, Community Empowerment, Administrative Model.

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- D. Slum Administration through the Decades
- E. Pune – A Case Study
- F. Observations from the Janata Vasahat – Phone Call Pilot Survey
- G. Way Forward

## A. INTRODUCTION

Urbanization is one of the key elements of the 21<sup>st</sup> century. With swift modernization, rapidly advancing technology, and fast-paced economic development, urbanization has proven to be a boon for most countries. Planning, financing, and management of urban areas are of paramount importance. These tasks are taken into consideration by the governments, as well as other stakeholders, collectively forming the basis of urban governance.

Urban governance suffers from issues such as migration, climate change, socio-economic gaps between the rich and the poor, inadequate recognition of the informal sector, and improper access to services for the poor and such challenges are often coupled with economic, socio-political, and environmental challenges collectively tendering a greater problem for proper policy implementation. Most of these challenges are faced by developing countries, especially India, and it is important to tackle these challenges for urbanization to thrive.<sup>1</sup>

The decentralization of urban governance by the 73rd<sup>2</sup> and the 74th<sup>3</sup> Constitutional Amendment Acts has led to the establishment of various bodies and principles which have tackled various issues of urban planning, municipal finances and functions, municipal discretion, and the recognition of urban local bodies as the third tier of governance has been expressly addressed over the years proving beneficial for urban development. However, over the years, urban administration has been focused on metro cities, ignoring the towns and villages, therefore, enhancing the neglect of slum administration in the system. Additionally, the outbreak of COVID-19 has worsened the situation in the slums. The failure of civic bodies in tackling the menace of COVID-19 in the slums is a reason enough which suggests a lack of proper research and the need for immediate attention to slum administration.

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1 Gautam Bhan, *From the Basti to the 'House': Socio-spatial Readings of Housing Policy in India*, 65(4) CURRENT SOCIOLOGY 587 (2017).

2 INDIA CONST. art. 243, amended by The Constitution (Seventy Third Amendment) Act, 1992.

3 INDIA CONST. art. 243, amended by The Constitution (Seventy Fourth Amendment) Act, 1992.

The word “slum” is not defined in the legal and statutory framework in India. The Cambridge Dictionary defines the word “slum” as a very poor and crowded area. The word “slum” was first used in London at the beginning of the 19th century to describe a “*room of low repute*” or “*low, unfrequented parts of the town*”.<sup>4</sup> A slum has been re-defined by the United Nations Program on Human Settlements (UN-HABITAT) as “*a contiguous settlement where the inhabitants are characterized as having inadequate housing and basic services. A slum is often not recognized and addressed by the public authorities as an integral or equal part of the city*”.<sup>5</sup> The UN-Habitat’s definition has been criticized for cementing the negative characteristics and in a way legitimizing eviction in the context of slum clearance.<sup>6</sup>

Slums are the antithesis of modern urbanism.<sup>7</sup> They feature in the urban planning discourse as the grey areas of development. They are stigmatized as unhealthy breakouts of subaltern urbanization. Subaltern urbanization can be understood as the development of settlement agglomerations.<sup>8</sup> It must be emphasized that subaltern agglomerations and settlements are not accidental in nature, rather they are an outcome of hegemonic urban planning. The hegemonic urban planning ensures the maintenance of distance and divisions between the urban poor and the dominant class.<sup>9</sup> However, the dependence of urban non-poor on the urban poor keeps fuelling the growth of these grey spaces in and around towns and cities. Urban planning remains non-inclusive because it is done based on population and not based on the vulnerabilities of the urban poor in the cities. It also happens because of data-based gaps in the planning.<sup>10</sup>

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- 4 Nolan LB, *Slum Definitions in Urban India: Implications for the Measurement of Health Inequalities*, 41(1) POPUL DEV REV 1728 (2015).
  - 5 Un-Habitat Urban Secretariat, et al., Revised Draft Report of *Expert Group Meeting on Urban Indicators: Secure Tenure, Slums and Global Sample of Cities* (2002), <https://www.citiesalliance.org/sites/default/files/expert-group-meeting-urban-indicators%5B1%5D.pdf>.
  - 6 Alan Gilbert, *The Return of the Slum: Does Language Matter?*, 31(4) INTERNATIONAL JOURNAL OF URBAN AND REGIONAL RESEARCH 697 (2007).
  - 7 Alejandro de Castro Mazarro, *Situating Slums in Hegemonic Urban Discourse: A Historiography of English-Language Architecture and Planning Journals*, 49 JOURNAL OF URBAN HISTORY 1 (2022).
  - 8 ERIC DENIS, ET. AL, SUBALTERN URBANISATION IN INDIA (2012).
  - 9 GAYATRI CHAKRAVORTY SPIVAK, AN AESTHETIC EDUCATION IN THE ERA OF GLOBALIZATION 125-132 (2013).
  - 10 Ambey Kumar Srivastava, *Segregated Data of Urban Poor for Inclusive Urban Planning in India: Needs and Challenges*, 7(1) SAGE OPEN 1 (2017).



Ignoring the slums in the development narrative and letting them fall prey to pandemics is a gross violation of human rights. Every epidemic, disaster, pandemic, or communal strife is linked to the class disparity of slum dwellers. Within the most severely affected countries, urban centers and metro cities were the worst hit. Within these cities, it was the slums that had emerged as the epicenter of the pandemic spread due to the lack of social distancing, cramped spaces, and unhygienic sanitation. In the city of Pune, for example, 90% of the cases had come from slums.<sup>11</sup> Dharavi, one of the world's largest slums was leading the charts for the highest cases in Mumbai.<sup>12</sup> The destitute situation in the slums showcases the unpreparedness of the system for slum administration. Thus, Slum administration and Governance are going to be the most important challenge for civic bodies in the post-COVID-19 era.<sup>13</sup>

The state of Maharashtra saw its first case when a couple coming back from Dubai to Pune tested positive. Since then, the cultural capital of Maharashtra had recorded thousands of new cases and hundreds of deaths for several months. Within the city limits, the slums were the worst affected with 67 pockets officially being declared as containment zone throughout the multiple waves. Bhawani Peth, the worst affected place had an infection rate of 24.3 which was substantially higher than the State's rate of 6% and even the rest of the city's 13%. However, despite this pandemonium, Pune's biggest slum, Janata Vasahat had not seen a single patient over the pandemic. The humongous settlement of 60 thousand-plus residents had successfully devised their in-situ strategies to tackle the pandemic. This chapter traces these strategies in light of government action and proposes a blueprint for future calamities through strong policymaking. Considering the Bhilwara Model and Kerala Model, it is important to objectively analyze the Janata Vasahat Model as well.<sup>14</sup>

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- 11 Kiran D. Tare, *Why Pune's Slums are COVID-19 Time Bombs*, INDIA TODAY (May 11, 2020), <https://www.indiatoday.in/india-today-insight/story/why-pune-s-slums-are-COVID-19-time-bombs-1676849-2020-05-11>.
  - 12 Soutik Biswas, *How Asia's Biggest Slum Contained the Coronavirus*, BBC NEWS (Jun. 23, 2020), <https://www.bbc.com/news/world-asia-india-53133843>.
  - 13 Jan Nijman, *India's Urban Future: Views from the Slum*, 59(3) AMERICAN BEHAVIOURAL SCIENTIST 406 (2015).
  - 14 Manob Das, et al., *Habitat Vulnerability in Slum Areas of India – What We Learnt from COVID-19*, 65 INT. JOURNAL OF DISASTER RISK REDUCTION (2021).



## **B. LEGAL ANALYSIS OF THE RIGHTS FRAMEWORK FOR SLUM ADMINISTRATION**

Urban planning, for a long time, has focused on slum clearance and not slum improvement.<sup>15</sup> The first five-year plan focused on data collection about slums for the slum clearance scheme. However, the first estimation of the slum population was found in the sixth Five-year plan. It was from the eighth five-year plan onwards that the welfare policies and slum upgradation plans started to surface.

### **Rights-Based Approach to Slum Administration**

Art. 25 of the UDHR (Universal Declaration of Human Rights) provides for the Right to Housing or the Right to a basic standard of living which provides for the well-being of the individual and his or her family. Slums and their sorry situation directly contradict this fundamental feature. Art. 21 of the Indian constitution provides for the Right to Life with dignity and not merely live an animal existence.<sup>16</sup> The demand for the Right to City as a Human Right or Right to Live with Dignity, coined by Henry Lefebvre in 1968 and later endorsed by UNESCO is perceived as a fundamental right necessary for a happy, content, peaceful, and conflict-free society. UNESCO has further defined RTC as “the equitable usufruct of cities within the principles of sustainability, democracy, and social justice”.<sup>17</sup> It is the collective right of the inhabitants of the city, particularly of the vulnerable and marginalized groups. The COVID crisis had exacerbated this discrimination and marginalization, especially in the slums. Janata Vasahat's effective governance model acted as a bulwark against this systemic discrimination with active democratic, political, and community participation whereby fundamental rights could be protected and enjoyed in a better manner.<sup>18</sup>

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15 Indranil De, *Slum Improvement in India: Determinants and Approaches*, 32(7) HOUSING STUDIES 990 (2017).

16 Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

17 Mark Purcell, *Possible Worlds: Henri Lefebvre and The Right to the City*, 36 JOURNAL OF URBAN AFFAIRS 141 (2014).

18 Adam Michael Auerbach & Tariq Thachil, *How does COVID-19 Affect Urban Slums? Evidence from Settlement Leaders in India*, 140 WORLD DEVELOPMENT (2021).

## **C. SLUMS ADMINISTRATION – POLICY AND LEGISLATIVE APPROACHES**

Hardcore policymaking keeping the slums central to the legislative discourse was rarely found after independence. Mostly, it was allowed to fester into multiple caste and community ghettos which could be used by political polarization for electoral gains for the next 75 years. These readymade vote banks were nurtured over the decades by multiple political parties with great care in almost every state of our country. The Slum Areas (Improvement and Clearance) Act, of 1956 was one of the first attempts at articulating this discourse on the rising relevance of slums in post-independent India. It provided for the improvement and clearance of slum areas which were set up after partition. These slums had slowly started becoming the hotbed for waterborne diseases. Unhygienic conditions and lack of sanitation led to a major blot on the optimistic theme of a developing India post-1947. As per the Act, any accommodation which is dilapidated, overcrowded, has faulty arrangements and design, is unsafe, has a severe lack of ventilation, light or/and has deplorable sanitation facilities or has systems that are detrimental to the physical, moral, and emotional wellbeing of a citizen can be called as a slum.<sup>19</sup> *The National Urban Housing and Habitat Policy (2007)* was the next best notable feature that could take over the legacy of the earlier-mentioned Act of 1956.<sup>20</sup> The provision of 'Affordable Housing for All' with special emphasis on vulnerable sections of society was at the core of this effort. Then came the *Draft National Slum Policy (2001)*. The draft policy, although ambitious and extremely well drafted on paper has not been accepted by other central government departments, especially those owning the land on which many informal settlements had developed, such as the railways, port trusts, and defense establishments. These agencies did not allow municipal or state government agencies to provide basic amenities to the slum dwellers living on their lands. Consequently, the reforms should have been in line with

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19 Slum Areas (Improvement and Clearance) Act, 1956.

20 Seema Sharma & Tabrez Uz Zaman, *A Study of the Health Status of the Slum Dwellers and the Present Healthcare Facilities in the Slum Areas*, 19(3) BIOSCIENCE RESEARCH 1542 (2022).

the Centre for Disease Control (CDC) in the USA.<sup>21</sup> However, the magnitude of the problem at hand made for a unique India-specific customized policy. Similarly, as per Art. 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) speaks about adequate safe living conditions as integral for civilizational growth. It informs the state they take special measures to take care of accommodation along with food, clothing, and shelter. Similarly, Article 43 of The International Convention on Protection of the Rights of All Migrant Workers and members of their Families stresses not just the right to safe affordable, and secure livelihood but also active protection from the state to ensure there is no exploitation of any sort, either formally or informally. The pandemic should have been an opportunity for the governments to evoke these fundamentally necessary protections.<sup>22</sup>

## **D. SLUM ADMINISTRATION THROUGH THE DECADES**

For the advancement of slum areas, the Government of India along with state governments rolled out various schemes. The central government had also allocated funds to states to improve the status of shanty towns. The idea of slum administration started getting developed in 1972 under the Environmental Improvement of Urban Slums, a central government scheme. To coordinate with this work at the state level, Maharashtra Slum Improvement Board was set up in 1974. Later it merged with MHADA (Maharashtra Housing and Area Development Authority) and worked on improving the condition of slums on private and government land. The scheme focused on the construction of drains and pathways, setting up of streetlights, community taps, etc. The results were not fruitful as they did not significantly improve the circumstances. Later, several programs like the National Slum Developer Program (NSDP), Valmiki Ambedkar Awas Yojana (VAMBAY), Indira Awaas Yojana (IAY), Urban Ashray Housing Program, Nirmal Jyoti program, Mythri Housing Scheme

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21 Rashmi Kundapur, et. al., *Assessment of Challenges and Opportunities and Identification of Approaches and Innovations in COVID-19 Pandemic Management by Different States in India: A Qualitative Approach*, 12(1) JOURNAL OF EPIDEMIOLOGY & GLOBAL HEALTH 74 (2022).

22 Kennedy Saldanha, *Many realities, One world: Dharavi, Stranded Migrants, and the Lockdown in India*, 20 QUAL. SOCIAL WORK 289 (2021).

were propelled to address the issue. NSDP was launched in the year 1996 to improve community infrastructure, physical amenities, social amenities, and Health care. Annually this program received a fund of Rs. 400 crores. Similarly, the Valmiki Ambedkar Awas Yojana, launched in 2001 at the end of the ninth plan 5-year plan was aimed at the upgradation and construction of houses for the one who belongs to the category below poverty lines in urban slums. It provided the facility of health services and enabled the urban environment by building community toilets under a component of the scheme called Nirmal Bharat Abhiyan. The Asian Development Bank also assisted in the enhancement of the slum areas in India. Recently, in the year 2015, the Pradhan Mantri Awas Yojana (PMAY) scheme was launched by the Prime Minister of India. It was called the “Housing for All” program and intended to make India slum-free by 2022. Its goal was to bestow affordable housing to the poor people residing in Urban areas. The main component of the mission is the rehabilitation of slum dwellers with the help of private developers and providing houses to the needy on subsidy. PMAY proposed to build around 2 crore houses, however, it appears to be a rearrangement of an already existing similar program, called Rajiv Awas Yojana which was introduced in 2009 by the UPA government. Before these schemes, several others were launched like the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) to mend the infrastructure and standard of living in the cities.<sup>23</sup>

Correspondingly, many Acts were enacted to elevate and prevent further expansion of slums. One such act is the Maharashtra Vacant Lands (Prohibition of Unauthorised Structures and Summary Eviction) Act, 1975.<sup>24</sup> The Act mostly covered the temporary slums. According to this Act, all or any land encroached by unlawful tenants can be considered vacant. In case they are evicted then, a proper accommodation has to be given. Also, for unauthorized occupation of land, the squatters must pay compensation. Due to the Act,

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23 Mat Burrows & Peter Engelke, *What World Post COVI-19?: Three Scenarios*, ATLANTIC COUNCIL (2020).

24 Emily Rains, *An Evolving Threat to Life and Livelihoods: Comparing the Health, Economic and Political Implications of the First Two Waves of COVID-19 in Bengaluru and Patna Slums*, 34(2) ENVIRONMENT AND URBANIZATION 476 (2022).

many demolitions took place in various parts of Maharashtra. Later policies of rehabilitation, removal, protection, and improvement were made. Another such similar Act is the Slum Areas (Improvement, Clearance, and Redevelopment) Act.<sup>25</sup> Under the Act, a competent authority was eligible to declare an area as a slum if it fulfills certain conditions like an area unfit for human habitation, overcrowded, etc. The improvement was to be carried out only on those lands which belonged to the government. However, several appeals against it were filed by private owners.<sup>26</sup>

But were these schemes and acts helpful in the eradication of slums or was it just a tactic of government/parties to attract votes from the weaker section of the society? Most of these projects got delayed due to corruption or some other reason, resulting in loosing of faith amongst the weaker sections for government plans. They moreover developed resistance to relocation or development, making implementation of the projects difficult. Further, according to reports, the number of buildings and houses constructed under these schemes is relatively low, especially in metro cities like Mumbai, Chennai, etc. If we take the example of PMAY, it was promised to provide 2 crore houses by the end of 2022. This meant that on average around 30 lakh houses were to be built in a year. But as per reports, only 3,58,703 houses were sanctioned and out of it, merely 20,801 houses were constructed in the Beneficiary Led Construction Scheme. Most of the above-stated programs are in the same predicament, indicating that the projection of these policies by the government is in a dismal situation contrary to progress.

## **E. PUNE: A CASE STUDY**

For this paper, we took Pune as the area of study for three reasons:

- Pune is on the cusp of facing the same demographic and civic problems that Mumbai started facing two decades ago. The huge population and the meagre resources make Mumbai a city that is sitting on a time bomb

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25 Nandini Sharma, et al., *Second Wave of the COVID-19 Pandemic in Delhi, India: High Seroprevalence Not a Deterrent?*, 13(10) CUREUS e19000 (2021).

26 Samuel Brannen, et al., *COVID-19 Reshapes the Future*, CSIS (July 28, 2020), <https://www.csis.org/analysis/covid-19-reshapes-future>.

of infrastructural collapse. If Pune does not take preventive steps, it too faces the risk of reaching a point of no return.

- Pune had emerged as the second most affected city in the COVID pandemic and the civic administration was struggling for answers.
- Multiple success stories were emerging from the slums of Pune where they had shown resilience in tackling the pandemic without any active government support. These need to be emulated and incorporated into the broad policy-making discourse of urban town planning and slum administration.

Like in Mumbai, densely-populated areas, especially slums, were the epicenters of COVID-19 in Pune as well. Almost 90% of the positive cases were from the slums in five of the 15 zones.<sup>27</sup> This is significant, given that 1.6 million out of Pune's 4 million citizens inhabit the slums.<sup>28</sup> The Pune Municipal Corporation (PMC) had declared 67 slum pockets in the city as micro containment zones. No one in these areas was allowed to go out or have visitors.

At 24.3%, the Bhavani Peth slum had the highest rate of COVID infection in Maharashtra. That means 24.3 of 100 people tested positive for the disease.<sup>29</sup>

Pune's largest slum, Janata Vasahat, though, had bucked the trend. A locality of 6,00,000 people, it had not registered a single case throughout the pandemic. This was in large part due to the physical distancing initiative taken by the Janata Vasahat Kruti Samiti, an apex body in the slum. The committee had closed down all roads in the slum except one. It has set up a sanitization booth on that road that every resident had to pass through. According to PMC regional officials, public toilets were sanitized thrice a day and roads were cleaned twice. Vegetables were delivered to the doorstep, and some 100 residents were screened every day. Of the 45,000-odd people screened in the slum, none has reported positive for COVID-19.

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27 *Id.*

28 *Id.*

29 *Id.*

Of the total COVID-19 positive cases reported from Pune, over 60% had been recorded from slums, as indicated in the statistics shared by the municipal administration. During its visit to Maharashtra, the central government's team visited these slums in Mumbai and Pune. In their briefing, joint secretary of the Ministry of Home Affairs (MHA), Punya Srivastava, said, "The team found that the use of community toilets leaves residents to defy the lockdown and step out of their homes." The Centre had also advised installing portable toilets to reduce the use of community toilets in slum areas. Almost 42% of the city's population is living in slums where many residents do not have toilets in their homes and need to rely on public toilets.<sup>30</sup>

|   |                                     |            |
|---|-------------------------------------|------------|
| 1 | <i>Total Slums</i>                  | <b>564</b> |
| 2 | <i>Slums notified by Government</i> | <b>353</b> |
| 3 | <i>Slums not notified</i>           | <b>211</b> |

The urban poor population (slum population) in Pune is 30-35% of the total population of the city; the rapid growth of slums is largely an outcome of the economic activity and job creation capacity of the city. In Pune, 90% of slums are on private land and 10% are on government land.<sup>31</sup> The density in slums (person/km<sup>2</sup>) is about 6 times that of the overall density prevailing in the rest of the city. A high density also indicates high health and social costs. It was also observed that 27% of the city's population resides in declared slums and they occupy only 4% of the total city area.<sup>32</sup>

## **F. OBSERVATIONS FROM THE JANATA VASAHAT – PHONE CALL PILOT SURVEY**

In order to understand how slum residents were affected by the lockdown and pandemic, we conducted a phone survey with 50 slum leaders/ people actively

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30 Maynard W. Swanson, *The Sanitation Syndrome: Urban Native Policy in the Cape Colony, 1900-1909*, 18 THE JOURNAL OF AFRICAN HIST. 387 (1977).

31 *Slums in Pune*, PUNE MUNICIPAL CORPORATION, <https://www.pmc.gov.in/en/total-slums> (last visited Apr. 07, 2023).

32 Lawrence O. Gostin, Scott Burris & Zita Lazzarini, *The Law and the Public's Health: A Study of Infectious Disease Law in the United States*, 99(1) COLUMBIA LAW REV. 59 (1999).



engaged in social work during the pandemic / who may or may not be affiliated with any political party across 5 slums in Pune, at the height of the lockdown in April and May 2020, primarily focussing on Janata Vasahat, Pune's largest slum with a population of 6 Lakh. To our knowledge, this was the first such effort to canvas these important slums during the pandemic in Pune as we did not find any existing data or information from the media reports or the government authorities.

- First, our survey demonstrated that slum leaders were not idly watching the virus spread and economic distress deepens. Roughly six in ten leaders contacted a local politician during the lockdown to request assistance. However, the focus of their lobbying efforts shifted dramatically from 'normal' times. 91% of requests during the lockdown were for food rations, instead of more usual demands for public infrastructure. This reorientation makes sense given leaders estimated the average household in their settlement had only enough savings to survive for 24 days. This shift in focus highlights a hidden cost of the pandemic—a reduction in the time leaders have to address pre-existing deficiencies in basic public services.
- Just like how every country has an H1B limit and thus keeps track of the number of immigrants entering the country for employment, education, or leisure, every city and its slums should also be given the authority of deciding how many people it can take and how much resources will it require to take care of them. A streamlined system of checks at entry points will help in developing infrastructure. In Janata Vasahat, the local leaders monitor the number of residents and have a detailed roll list of who is entering the slum and who is leaving. Such detailed lists are not even available with the municipal corporation. This is the most important first step.
- Pre-pandemic disparities in infrastructural development also shape the extent to which residents can abide by public health guidelines. Accessing water requires them to congregate at communal sources like public taps and truck-fed tanks, where intermittency in the water supply creates uncertainty that forces long waits. Slum leaders in settlements with sparser household connections are nearly twice as likely to report public water sources as a problem for social distancing than leaders in settlements with



more widespread connectivity. Approaching 'slums' as a homogenous category misses how disparities across settlements matter during the crisis.

- Slum leaders are not uniform in their ability to help residents. The authors asked leaders to enumerate any relief schemes that had been initiated or expanded during the lockdown that slum residents might benefit from. 47% of leaders correctly identified zero or 1 scheme, while 25.5% of leaders correctly identified 3 or more schemes. Slum leaders also varied in their reported ability to get requested assistance from politicians. Two key factors underpinned their influence with city leaders: education and their embeddedness in political party networks. In prior, pre-pandemic research, we found these exact traits corresponded with effectiveness in everyday problem-solving. Leaders who were effective before the pandemic remained more effective during it.
- Public health experts have called for community-driven solutions to slow transmission and soften the economic blow of containment measures. In India's slums, such participatory efforts will come from the proactiveness of informal leaders. Our findings reveal active forms of leadership even in the most under-developed areas of India's cities. However, we also document that slum leaders are deeply dependent on party networks and that nine in ten are men. These traits inevitably bias the types of residents that leaders are most likely to hear and help. Rather than flatten and simplify slum communities, participatory efforts must recognize these complexities within them.

## **G. WAY FORWARD**

*Firstly*, satellite Towns – Need to be developed by the municipal corporation, however, no vision has been shown in Pune to build the same. Other developing countries have drawn out such plans decades in advance. Their efforts are bearing fruits. This helps in the systematic regulation of the population in times of crisis, like the recent pandemic. *Secondly*, development is concentrated in the urban townships and metro cities, thus ignoring the B-tier and semi-urban centers. Slum Administration should focus on shifting people to these B-tier townships thus decongesting the existing slums in a phased manner. Through our preliminary research, we realized that people do not mind shifting to these

semi-urban and B-tier townships if there are good jobs, and proper water and sanitation facilities available. *Thirdly*, autonomy to Municipal Bodies should be given to undertake drastic reforms. A similar model has been tried and tested on the Cantonment boards with successful results. It is important to understand that ‘Decentralization’ is different from being ‘autonomous.’

Further, the Mayor and the Municipal Commissioner should be given more power compared to other governing bodies. They can’t be on par with their colleagues in the ZP (Zilla Parishad).

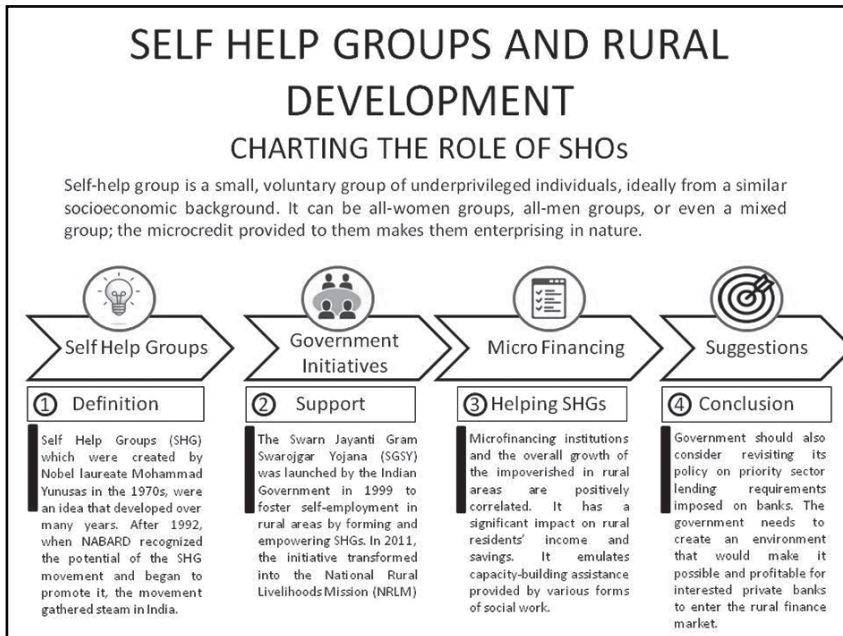
Lastly, sewage arrangements, cleaning of rivers, and canals, wastewater disposal and recycling, and beautification of cities- require private expert help, which unfortunately the municipal corporations might not have the technical expertise for. Chandigarh and Navi Mumbai are examples of successfully planned townships developed by private architects. Slum Administration in Urban Town planning is a field in which the existing governing bodies are not trained. Hence it is time for us to outsource the same and lastly, decentralization is the need of the hour.

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## STUDY ON THE ROLE OF SELF-HELP GROUPS IN THE DEVELOPMENT OF RURAL FAMILIES SINCE 2010

*Jyotirmoy Banerjee\* & Saloni Bahl\*\**



### *Abstract*

In this era of development when countries are at a stake in developing their essentials and making them stronger, India is currently dealing with the issue of poverty in the best possible manner. The author has significantly focused on the role of self-help groups for the development of families which has taken place in India for over a decade and has played a vital role in the development of the nation. Before 2010, there have been various government-launched schemes which have focused on the matter

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of self-employment and led to further various initiatives for the development of rural bodies. This research paper shall deal with the importance of self-help groups in India and how they have made vital developments in various segments related to micro-financing, rural development, employment, and other social activities with special reference to the role played in the time of the COVID-19 pandemic. Lastly, the author shall also focus on the significance of women's self-help groups which are further supported by the Government of India's national projects financed by the World Bank and how it has skilled the ambit of self-help groups model in more than 28 states and 6 union territories of the country which has reached to a segment of 67,000,000 people. The author has also thrown light on some major suggestions and recommendations which can be a major blow to the development of self-help groups and the promotion of the organization. The author concludes by observing that the support of policymakers can support the groups in increasing their diversity by making them the direct beneficiaries of essential services.

**Keywords:** Self-Help Group, Development, Policy, Benefit, Scheme.

## **Contents**

- A. Introduction
- B. Definition of Self-Help Groups
- C. Impact of Self-Help Groups
- D. Way Forward

## **A. INTRODUCTION**

The expansion of the rural population has a significant impact on the development of a state. Every developing nation, including India, deals with poverty as a topical issue. One of the fundamental requirements for the poor rural members of society is a stable financial situation. Microfinance to Self-Help Groups can be considered a dynamic technique for addressing the financial needs of those underprivileged members of society who reside in rural areas. A total of Rs. 14,403 crores have been invested in over 2.25 million SHGs since 1999, employing over 6.697 million people. By ensuring a significant increase

in income over time, the goal of lifting low-income families out of poverty is to be accomplished through a process of social mobilization, skill development training programs based on local demand, and capacity building, as well as the provision of income-generating assets through a combination of bank credit and government assistance.<sup>1</sup>

A self-help group is a small, voluntary group of underprivileged individuals, ideally from a similar socioeconomic background. It can be all-women groups, all-men groups, or even a mixed group; the microcredit provided to them makes them enterprising in nature. Women's groups, however, consistently outperform men's groups in all crucial SHG tasks.<sup>2</sup> The Self-Help Group encourages its members to make modest savings. A bank is where the savings are maintained. The SHG is the name of this shared fund. One SHG typically has no more than twenty members. The idea of SHG is now well-known. It has been around for about two decades. According to reports, SHGs help the nation's economy expand more quickly.

Self Help Groups (SHGs), which were developed by Nobel laureate Mohammad Yunus in the 1970s, were an idea that developed over many years. After 1992, when NABARD recognized the potential of the SHG movement and began to promote it, the movement gathered steam in India. The SHG-Bank Linkage Program (SBLP) of NABARD provided group members with access to official financial services. The SBLP has established itself as an excellent tool for rural women's social and economic empowerment during the past 20 years. Through a three-tiered architecture of local institutions at the group, village, and cluster levels, India has seen the state-led promotion of SHGs. The Swarn Jayanti Gram Swarojgaar Yojana (SGSY) was launched by the Indian government in 1999 to foster self-employment in rural areas by forming and empowering SHGs. In 2011, the initiative transformed into the National Rural Livelihoods Mission (NRLM). In November 2015, the program's name was changed to Deendayal Antyodaya Yojana (DAY –NRLM). With about INR 161 billion in savings

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1 Nagesha B & Ajeya G, *Role of Self Help Groups In Rural Development – A Study*, 2(4) INTERNATIONAL JOURNAL OF TREND IN SCIENTIFIC RESEARCH & DEVELOPMENT 1 (2018).

2 *Id.* at 3.

deposits, DAY-NRLM today serves 100 million families through 8.5 million SHGs. initiatives from the state governments, such as Jeevika in Bihar, and Kudumbasree in Kerala. The National Rural Livelihoods Mission (NRLM) of the Indian government, which is co-financed by the World Bank, supports women's SHGs. Over 67 million women have been reached by NRLM's expansion of the SHG model across 28 States and 6 Union Territories of the nation. The women have amassed savings of \$1.4 billion and borrowed an additional \$37 billion from private banks.<sup>3</sup>

## **B. THE DEFINITION OF SELF-HELP GROUPS**

A typical Indian SHG is made up of 10–20 poor women from comparable socioeconomic backgrounds who get together once a month to share savings and talk about problems that are important to both groups. A collective bank account is opened with the combined funds, and it is then utilized to lend money to deserving women. NGOs, the government, and occasionally even the commercial sector help to facilitate these activities. The group's facilitators manage operations and connect women with district offices, state agricultural produce market committees, and rural lending organizations. Additionally, SHGs have the option to contract for extra services including child care, after-school activities for students, and training for new jobs.<sup>4</sup> SHGs also play a significant role in society by providing a forum for the discussion of topics including alcoholism, dowries, women's abuse, poor infrastructure, and educational standards.<sup>5</sup>

By assisting rural banks in group lending and by offering participating rural banks low-interest financing and refinancing support, India's National Bank for Agricultural and Rural Development (NABARD) piloted its "bank-SHG

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3 *Role of SHGs in Development of Rural India*, INSIGHTS IAS, <https://www.insightsonindia.com/social-justice/issues-related-to-rural-development/role-of-shgs-in-development-of-rural-india/> (last visited Nov. 6, 2022).

4 *SHG Bank Linkage Programme*, NABARD, <https://www.nabard.org/contentsearch.aspx?AID=225&Key=shg+bank+linkage+programme> (last visited May 15, 2023).

5 *Overview of SHGs*, VIKASPEDIA, <https://vikaspedia.in/social-welfare/rural-poverty-alleviation-1/self-help-groups/overview-of-shgs> (last visited May 15, 2023).

linkage initiative” in 1992.<sup>6</sup> The SHG linkage program has since grown into one of the biggest microfinance networks in the world. Additionally, the Indian government has extensively pushed women’s SHGs, particularly in the southern states, since at least the 1980s.<sup>7</sup> These groups have been the focus of several sizable development initiatives, including the Integrated Rural Development Program (Swarnjayanti Gram Swarojgar Yojana) and, more recently, the NRLM.<sup>8</sup>

SHGs have a variety of beneficial benefits on credit and default risk, but there has been less of an increase in income or assets, according to the evidence currently available. Improvements in consumption and savings are found in an Andhra Pradesh SHG study, mostly for members of recently created groups.<sup>9</sup> SHG members in Orissa are better able to coordinate while managing resources from a shared pool.<sup>10</sup> More vulnerable women are more likely to leave the groups because of differences in education, land ownership, and family networks within groups.<sup>11</sup> Regular SHG participants have higher levels of trust and interaction with one another, are more prepared to share risk, and are less likely to default on their loans, according to one of the few randomized controlled experiments.<sup>12</sup>

It has been demonstrated that impoverished people’s collective activity strengthens property rights, boosts negotiating power in labor markets, improves access to financial markets, and boosts state investments in underprivileged areas.<sup>13</sup> Governments, funders, and non-governmental organizations (NGOs)

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6 *Id.*

7 PRIYA BASU, IMPROVING ACCESS TO FINANCE FOR INDIA’S RURAL POOR (2006).

8 NRLM, <https://nrlm.gov.in/outerReportAction.do?methodName=showIndex#gsc.tab=0> (last visited May 15, 2023).

9 Klaus Deininger & Yanyan Liu, *Longer-term Economic Impacts of Self-help Groups in India* 1, 2 (World Bank Policy Research Working Paper WPS4886, 2009).

10 Paolo Casini, Lore Vandewalle & Zaki Wahhaj, *Public Good Provision in Indian Rural Areas: The Returns to Collective Action by Microfinance Groups*, 31(1) WORLD BANK ECONOMIC REVIEW 97 (2017).

11 Jean-Marie Baland, et al., *Micro-Finance Lifespans: A Study of Attrition and Exclusion in Self-Help Groups in India*, 4(1) INDIA POLICY FORUM 159 (2008).

12 Benjamin Feigenberg, et al., *The Economic Returns to Social Interaction: Experimental Evidence from Microfinance*, 80(4) REVIEW OF ECONOMIC STUDIES 1459 (2013).

13 Raj M Desai & Shareen Joshi, *Collective Action and Community Development: Evidence from Self-Help Groups in Rural India* 1, 2 (World Bank Policy Research Working Paper WPS6547 2014).



have aimed to increase their support for membership associations, cooperatives, producer associations, and other kinds of structured platforms for collective action in underdeveloped communities in light of this data. The World Bank has provided financing for community-based and community-driven development projects totaling more than \$50 billion since 1999.<sup>14</sup>

## **C. IMPACT OF SELF-HELP GROUPS**

The Millennium Development Goal (MDG) emphasizes three strategic objectives: improving equitable access to productive natural resources and technology, strengthening the capacity of the rural poor and their organizations, and expanding access to financial services and markets to achieve poverty reduction.<sup>15</sup> Institutions are created to manage natural resources such as water, forests, and land, developing rainfed agriculture, and the environment. Self-Help Groups (SHGs), User Groups (UGs), Watershed Committees (WCs), Watershed Associations (WAs), Joint Forest Management Committees (JFMCs), Micro Finance Institutions (MFIs), and other local people's organizations have sprung up all over with support from the State for organizing the community and utilizing their resources in fruitful endeavors. Most of these organizations work to give their members options for stable employment.

The following are the categories in which the SHGs especially focus and play a vital role in the rural areas and underdeveloped parts of the states in India.

### **1. Microfinancing**

Providing financial services, such as credit, savings, and insurance, to those with low incomes who are just over the federally designated poverty line and to those who are poor and below that line to generate social value is referred to as microfinance. The reduction of poverty and the wider effects of bettering livelihood chances through the provision of capital for microbusiness, insurance,

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14 GHAZALA MANSURI & VIJAYENDRA RAO, *LOCALIZING DEVELOPMENT: DOES PARTICIPATION WORK?* (2013).

15 IFAD, *Impact Assessment Report 2019-2021*, <https://www.ifad.org/ifad-impact-assessment-report-2021/index.html> (last visited Nov. 6, 2022).

and savings for risk mitigation and consumption smoothing are all included in the development of social value.<sup>16</sup> In India, a wide range of players who employ various microfinance delivery techniques offer microfinance. Since Bangladesh's Grameen Bank was established, several actors have worked to find innovative ways to give the poor access to financial services. National programs have been piloted by governments.

Microfinance institutions and the overall economic growth of the impoverished in rural areas are positively correlated. It has a significant impact on rural residents' income and savings. It evaluates capacity-building assistance provided by various forms of social work. Microfinance improves the quality of life for rural residents who are aware of "Human Rights." It is interesting to note that every responder concurred that microfinance increased their expertise and sense of self-worth while also giving them bravery and self-confidence. It was discovered that microfinance increased rural women's literacy levels and raised respondents' knowledge of the need for children's education.

The WSHGs were determined to be sustainable because the women were more united and committed, adhered to the main goals of the organizations, used the borrowed money for useful endeavors, and were concerned about the welfare of their children and other family members. Members also join SHGs to further their education and combat socioeconomic challenges. Some studies highlight the advantages of SHGs for boosting women's self-confidence in Kerala and Tamil Nadu,<sup>17</sup> encouraging savings to help financially vulnerable people,<sup>18</sup> and improving access to healthcare in Bihar.<sup>19</sup> Contrarily, microfinance initiatives have viewed women as credit intermediates between their families and SHGs without giving them any influence over how they use loans.<sup>20</sup> This frequently

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16 *Id.* at 15.

17 S. Hemavathy Nithyanandhana & Norma Mansor, *Self-Help Groups and Women's Empowerment*, 7(2) INSTITUTIONS & ECONOMICS 143 (2015).

18 Meera Tiwari, *The Global Financial Crisis and Self-Help Groups in Rural India: Are There Lessons from Their Micro-Savings Model?*, 23(2) DEVELOPMENT IN PRACTICE 278 (2013).

19 Anant Kumar, *Self-Help Groups, Women's Health and Empowerment: Global Thinking and Contextual Issues*, 4(3) JHARKHAND JOURNAL OF DEVELOPMENT AND MANAGEMENT STUDIES 2061 (2006).

20 Sujata Balasubramanian, *Why Micro-Credit May Leave Women Worse Off: Non-Cooperative Bargaining and the Marriage Game in South Asia*, 49(5) JOURNAL OF DEVELOPMENT STUDIES 609 (2013).

limits members' ability to actively participate in group activities and reduces WSHG efficacy.

Historically, group-lending microfinance programs have emphasized loan repayments and evaluated SHG efficiency from the lenders' point of view. The poor financial performance of bank-linked SHGs in India has been highlighted by studies from the perspective of the borrowers in terms of group members' irregular savings, low credit absorption capacity, lending from formal and informal sources other than SHGs, and low repayment of bank loans. Women receive non-financial benefits from their federation in addition to financial performance.<sup>21</sup>

WSHGs often consist primarily of participants from comparable socioeconomic backgrounds. In India, 65.4% of women are literate, and 55.21% of women work as agricultural laborers. Due to their low socioeconomic condition, rural women join SHGs in the hopes of raising their employment and income. However, the members' comparable socioeconomic characteristics also frequently favor SHGs for loan payback. This calls into question the efficiency of WSHGs when women from lower socioeconomic positions are included. Instead, group heterogeneity in women's socioeconomic factors may increase the efficiency of WSHGs. Additionally, research that has been published thus far has scarcely looked at how group dynamics and processes affect a group's efficacy.

Self-Help Group-Bank Linkage Programme (SHG-BLP) outreach is greatly skewed in terms of the region in India, with the southern states having the highest proportion of WSHGs. With 53.5% of the nation's impoverished people living in the major poverty-stricken states of Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Orissa, Uttarakhand, and Uttar Pradesh, just 23.60% of the nation's total microfinance outreach is directed at them. For instance, Bihar has the second-highest percentage of rural residents in India (88.7%), with 34.1% of them living in poverty. Additionally, the state has 43.6% of rural residents in

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21 Ritesh Kumar, et al., *Characteristics for the Effectiveness of Women's Self-Help Groups in Bihar*, 29(5) INTERNATIONAL JOURNAL OF VOLUNTARY AND NONPROFIT ORGANIZATIONS 1283 (2018).

the 20–59 age range, giving rise to higher opportunities for livelihood-related activities and, consequently, microfinance interventions.<sup>22</sup> As opposed to this, there are BIH sizable rural female population.

In general, microfinance institutions encourage residents in underdeveloped areas to improve their way of life. Employees of MFIs who are operating in underdeveloped areas, in particular, should receive special incentives. SHG members must receive training in the usage of new technologies, and frequent meetings should be arranged. For a loan to be used effectively and for interest to avoid spreading to other individuals, it must be delivered to the appropriate person at the appropriate time. Members of SHG must be properly monitored, so that they can't misuse the loan money. The following recommendations for potential future lines of exploration have been made based on the current study. For the beneficiaries to improve their accounting knowledge and accurately maintain their cash book and other relevant books of accounts, a special training program addressing good accounts keeping should be offered, and accounting specialists should be recruited as resource persons. Women need to be adequately educated for improved group functioning, and periodic training at regular intervals may be made, as well as a study on the relevant field may be undertaken to outcome the findings.

Microfinance is anticipated to have a substantial impact on rural development and poverty reduction, especially for rural women. In India, there is an enormous opportunity for expanding microfinance organizations. If this sector continues to expand at its quickest rate, a wide cross-section of society could gain. While the majority of members had no savings during the pre-SHG era, a significant percentage of members started saving only after joining the groups. Many participants resolved their issues on their own after joining the groups.<sup>23</sup>

## **2. Rural Development**

Rural development programs like watershed programs involving the entire community and natural resources influence (i) productivity and production of crops, changes in land use and cropping pattern, adoption of modern

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<sup>22</sup> *Id.* at 25.

<sup>23</sup> *Id.* at 21.

technologies, increase in milk production, etc.; (ii) attitude of the community towards project activities and their participation in different stages of the project; (iii) socio-economic conditions of the people such as income, employment, assets, health, education, and energy use; (iv) impact on the environment; (v) use of land, water, human and livestock resources; (vi) development of institutions for the implementation of watershed development activities; and (vii) sustainability of improvements.<sup>24</sup>

The formation of community-based organizations (CBOs) aims to encourage local villagers to take part in a range of development activities.<sup>25</sup> They consist of Self-Help Groups and User Groups (UGs) (SHGs). The management and upkeep of the structures built on the common lands of watersheds are the purviews of the UGs, which are homogeneous groups. SHGs are homogeneous groups made up of people who have a similar identity, such as agricultural laborers, landless families, women, shepherds, or members of reserved castes or tribes. These organizations are set up for a variety of income-generating activities, such as goat and cattle farming, microfinance thrift organizations, and small businesses, among others. The majority of the SHG members are women.<sup>26</sup>

All national watershed development programs now include a requirement for SHG creation. SHGs are organized by the Project Implementing Agency (PIA) in the watershed regions.<sup>27</sup> SHG membership should typically be open to 50% of the villagers who depend on watersheds either directly or indirectly. To provide the SHGs with seed money for vocational development at a rate not to exceed Rs. 10,000 per SHG for engaging in income-generating activities, the PIAs established a revolving fund with a cap of Rs. 1,00,000.<sup>28</sup> The SHG

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24 *Id.* at 21.

25 Kasi Eswarappa, *Community-Based Organizations (CBOs) and Their Role in the Development of Women: A Case from Andhra Pradesh*, 13(1) CONTEMPORARY VOICE OF DALIT 34, 36 (2020).

26 *Id.* at 29.

27 Government of India, Common Guidelines for Watershed Development Projects (2008), issued on Feb. 02, 2008, <https://agricoop.nic.in/Documents/WSDGuidelinesfinalversion13-2-08.pdf>.

28 *Revolving Fund for Women SHGs Now Rs 1 Lakh: Maharashtra CM*, INDIAN EXPRESS (Feb. 17, 2019), <https://indianexpress.com/article/cities/mumbai/revolving-fund-for-women-shgs-now-rs-1-lakh-maharashtra-cm-5587602/>.

members must pay back this seed money in a maximum of six-monthly installments. This might be invested back into the same or different SHGs.

The SHGs established under rural development programs engaged in a variety of activities, as opposed to the majority of SHGs established under various programs, which serve as microfinance thrift organizations. They consist of jobs that generate revenue, such as raising goats and livestock, running small businesses, and tailoring. Additionally, the organizations that engage in lending and saving among themselves. Of course, there isn't a lot of participation in development initiatives.

### **3. Employment**

In rural areas, gender inequality and prejudice are still pervasive. Girls are discouraged from attending school since they typically have to labor at home, coupled with a poor male-female literacy ratio. On average, women work 16 hours a day in domestic chores, much of it unpaid.<sup>29</sup> Average daily agricultural salaries for women in paid work are lower than for males, at Rs. 47 as opposed to Rs. 63 for men. Similar to this, women earn an average of Rs. 54 per day in the non-skilled, non-agricultural sector, compared to Rs. 104 for men, and Rs. 126 on average in the skilled labor sector, compared to Rs. 315 for men with equal abilities. Although it is socially expected that women work from home, poor women need occasional paid jobs, which puts them in danger of harassment. Women with disabilities (WWDs) must fight against two types of stigmas.<sup>30</sup>

Giving members of the self-help organization financial support to launch small businesses is one of their major contributions. In this survey, it was discovered that the respondents worked in businesses that generated income, including chicken farms, cow breeding operations, pickle and jalli factories, textile stores,

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29 UNICEF, ANNUAL REPORT 2006: FOR EVERY CHILD, REIMAGINE, <https://www.unicef.org/reports/annual-report-2006> (last visited Nov. 22, 2022).

30 ILO, INDIA WAGE REPORT: WAGE POLICIES FOR DECENT WORK AND INCLUSIVE GROWTH (2018), [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_638305.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_638305.pdf) (last visited May 15, 2023).

and grocery stores.<sup>31</sup> During the COVID lockdown, the firms' average monthly revenue was impacted.<sup>32</sup>

SHGs for WWDs provided these women with employment prospects and chances to participate in group activities with other women. They do, however, have some restrictions. Continuity is difficult. Experience has shown that if WWDs can stay with SHGs for a while, they are more likely to obtain jobs, whether it's due to better knowledge, better skills, being more accustomed to being outside, or having more courage to try new things.<sup>33</sup>

Therefore, the majority of employment postings are in disability groups, with a small number in government organizations. This is caused by deeply ingrained preconceptions regarding the skills of WWDs as well as restrictions on the types of labor that can be performed by them. Disability organizations and NGOs only offer sporadic work because they are subject to closure at any time due to a lack of funding. The labor market continues to favor hiring non-disabled women, and SHGs are still powerless to modify or have an impact on this.<sup>34</sup>

#### **4. Social Activities**

The ability to make decisions reveals a person's potential and hierarchy-level place in society. Participating in and creating income from self-help organizations has given women the opportunity to take on decision-making and financial management roles in what was previously mostly a patriarchal environment. By breaking out from the constraints of being a just servile partner who does the cooking and housework, they have advanced to become independent leaders, motivators, and occasionally crisis managers. Therefore, being a member of an SHG helped women through the challenging times during the Pandemic. The

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31 *Id.* at 39.

32 Jayasheela George & Shanmuga Priya S, *A Socio-Economic Impact Study of Rural Women Self Help Groups in Methukummal Village in Tamil Nadu*, 6(8) INT'L J SOCIAL SCI. ECO. RESEARCH 2669 (2021).

33 Supriya Sule, *Self-help Groups Play a Big Role in the Empowerment of Women*, LIVE MINT (Mar. 07, 2022), <https://www.livemint.com/opinion/online-views/selfhelp-groups-play-a-big-role-in-the-empowerment-of-women-11646670524028.html>.

34 Bishnu Maya Dhungana & Kyoko Kusakabe, *The Role of Self-Help Groups in Empowering Disabled Women: A Case Study in Kathmandu Valley, Nepal*. 20(7) DEVELOPMENT IN PRACTICE 855 (2010).



SHGs are also known for their social activities during a natural disaster and for their management and service to the affected families.<sup>35</sup>

## **5. Role of SHGs During the Pandemic**

Even during the lockdown, the self-help group continues to provide its members with financial support. The ability to come together and form an emotional support group would be a desirable characteristic that the common people missed out on throughout this time.

The initial COVID-19 defense shield was in insufficient supply. In just 15 days, from March 15 to March 30, 2020, 14,522 SHGs with 65,936 members in 399 districts across 24 states of India created more than 132 lakh masks, according to a report from the Ministry of Rural Development.<sup>36</sup> SHGs have established over 10,000 community kitchens across the nation to provide food for stranded workers, the underprivileged, and the vulnerable in light of the significant number of informal workers who lost their livelihoods during the lockdown and the disruption of food supply chains in some areas.<sup>37</sup> In Kerala, Kudumbashree alone has established 1300 kitchens.<sup>38</sup>

SHGs are assisting district administrations in Jharkhand, where poverty is prevalent, in identifying pockets of hunger and starvation so that measures can be made to alleviate them because they are the ones closest to the ground. The women are methodically using their extensive network of WhatsApp groups to prevent confusion and turmoil and stop rumors from spreading.<sup>39</sup> Jeevika, the state's SHG platform, is educating people about handwashing, quarantine, and self-isolation using leaflets, songs, movies, and phone messages in Bihar,

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35 Hari Hara Mishra, *Self Help Group Potential can Boost Rural Production and Consumption*, THE ECONOMIC TIMES (Apr. 06, 2020), <https://economictimes.indiatimes.com/industry/banking/finance/banking/self-help-group-potential-can-boost-rural-production-and-consumption/articleshow/75004753.cms>.

36 Ministry of Rural Development, *Community Kitchens Run by SHG Women Provide Food to the Most Poor and Vulnerable in Rural Areas During the Covid-19 Lockdown*, PRESS INFORMATION BUREAU (Apr. 13, 2020), <https://pib.gov.in/PressReleasePage.aspx?PRID=1613866>.

37 *Id.*

38 Manoshi Baruah Dekha, et al., *Impact of Self Help Groups on Socio-Economic Status of Rural Women*, 3(1) ASIAN JOURNAL OF HOME SCIENCE 94 (2008).

39 *Id.* at 25.



one of India's poorest states.<sup>40</sup> In addition, women are managing assistance centers and providing vital food supplies to the elderly and others who are under quarantine. They are operating a special helpline for returning migrants and other vulnerable families in Jharkhand, where many people leave the state for employment opportunities in other states.<sup>41</sup>

SHGs women who also serve as banking correspondents have emerged as a crucial resource because having access to financing is essential for individuals to support themselves during the lockdown.<sup>42</sup> These banks sakhis, which are regarded as important services, have continued to offer doorstep banking services to remote villages, distribute pensions, and make it possible for those who are most in need to receive credits into their accounts through direct benefit transfers (DBT).<sup>43</sup>

## **D. Way Forward**

Women's SHGs are being supported by the Government of India's National Rural Livelihoods Mission (NRLM) which is co-financed by the World Bank. NRLM has scaled up the SHG model across 28 States and 6 Union Territories of the country, reaching more than 67 million women.<sup>44</sup> The women have saved \$1.4 billion and leveraged a further \$37 billion from commercial banks.<sup>45</sup> The formation of common interest groups consisting primarily of women has made a substantial impact on their lives. The impact of SHGs on women's empowerment and social security has been invariably an improvement from the status quo but there is a need for support in several areas. The positive impacts of Self Help Groups on women can be enumerated as - It has developed stronger confidence which has changed gender dynamics and their role in the household, Significant improvements have been visualized in fertility rates, It has

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40 *Id.*

41 *Id.*

42 *In India, Women's Self-Help Groups Combat the Covid-19 (Coronavirus) Pandemic*, WORLD BANK (Apr. 11, 2020), <https://www.worldbank.org/en/news/feature/2020/04/11/women-self-help-groups-combat-covid19-coronavirus-pandemic-india>.

43 *Id.*

44 *Rural Women Collectives in India – Translating Agency into Economic Empowerment*, WORLD BANK (Sept. 10, 2019), <https://www.worldbank.org/en/results/2019/09/10/rural-women-collectives-in-india-translating-agency-into-economic-empowerment>.

45 *Id.*

enhanced female literacy rate, The participation of women in political activities has increased, The participation in development programs has improved, They have become more independent economically, Women can fight for their rights and entitlements, and They have emerged as a force to be reckoned with SHGs are becoming more than just financial intermediaries, instead they have emerged into a more political and social unit of society.

The important suggestions and recommendations for revamping the status of Self-Help Groups are as follows - Government should also consider revisiting its policy on priority sector lending requirements imposed on banks. Priority lending quotas are not fully observed and are often circumvented through such means as subscriptions by banks to NABARD and SIDBI bonds. The government needs to create an environment that would make it possible and profitable for interested private banks to enter the rural finance market. This would require liberalizing interest rates so that lending to small, rural clients becomes more profitable for banks. It is also required to revisit branch licensing policies (private banks may be interested in buying up the branch networks of the government-owned rural banks).

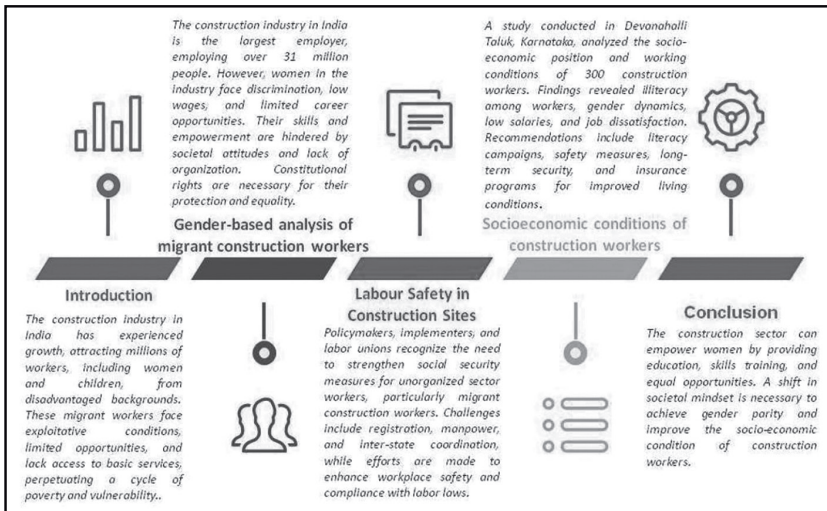
In summation, the promoting organizations and policymakers can promote group diversity, in terms of members' castes, education, and initial aspiration to join SHG at the formation stage and diversity in members' skills and expertise during their performance stage. Further, since access to finance is critical for people to sustain themselves during the lockdown, SHGs women who also work as banking correspondents have emerged as a vital resource. Deemed as an essential service, these *bank sakhis* have continued to provide doorstep banking services to far-flung communities, in addition to distributing pensions and enabling the neediest to access credits into their accounts through direct benefit transfers (DBT). Banks have given these women special orientation and provided them with financial incentives to enable them to continue to work during the lockdown. Therefore, its crucial to keep developing and encouraging self-help group initiatives in the backward parts of the country along with the rural areas.

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## THE SOCIO-ECONOMIC CHARACTERISTICS OF MIGRANT CONSTRUCTION WORKERS IN INDIA: AN OVERVIEW

*Dr. Anitha M\**



### *Abstract*

According to the International Labour Organization<sup>1</sup> over 85% of India's workforce is employed in the informal sector of the economy, with migrant workers making up the greatest portion of this sector. The 2011 census report estimates that India has 40 million migrant labourers. Because they lack the necessary skills, are illiterate, lack information, and have little bargaining power, these migrant workers are frequently forced into low-paying dangerous jobs. Their vulnerability is increased by their lack of identification, representation, and legal protection. A migrant worker is someone who "has been recruited directly by the employer or indirectly through a contractor in one state for employment in such

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<sup>1</sup> MIGRANT WORKERS AND HUMAN RIGHTS OUT-MIGRATION FROM SOUTH ASIA (Pong-Sul Ahn, eds. 2004).

establishment situated in another state” or “has come on his own from one state and obtained employment in an establishment of another state,” according to the Occupational Safety, Health and Working Conditions Code, 2020. The argument that migrant workers may seek aid through the several Central government programmes already in place is fallacious when considered considering the current humanitarian catastrophe. Unfortunately, most interstate migrant workers aren’t even aware of their rights, and those who dare to speak up risk losing their jobs and wages because the contractor typically only pays them enough to live on. This essay strives to illuminate social topographies, processes of exclusion, inequality and differentiation, and uneven power geometries. This essay will also examine the unique ways in which the epidemic has impacted Indian migrant workers and how that has affected efforts to contain and resolve the situation and lastly, it tries to offer perspectives and solutions for a more thorough and successful immigration policy.

**Keywords:** Migrant Workers, Construction, Human Rights, Unskilled, Unorganized.

## Contents

- A. Introduction
- B. Migrant Construction Workers’ Status in Construction Sector: A Gender-based Analysis
- C. Labour Safety in Construction Sites
- D. Study on the Socio-Economic Conditions of Construction Workers
- E. Way Forward

## A. INTRODUCTION

The construction sector has benefited from modernization and industrialization. More people live in small towns and cities, and the construction industry has also grown. Despite occasional lulls in the economy or construction, the sector is expanding more quickly. However, these workers, who are building the foundation of the new economy, themselves are caught in a time warp, shackled by feudal working relationships, underpaid, insecure jobs, and often literal servitude. In addition to the older, more established industrial and urban centres, new ones have also emerged on the map, where the construction

industry is expanding quickly and on a large scale. In general, the lack of better employment opportunities elsewhere has attracted a lot of workers to this industry. The building and construction industry employs a sizable workforce. In India today, there are more than 20 million construction workers,<sup>2</sup> including both adults and children. High levels of stress are caused by pay disparities, prospects for progress being denied due to a lack of skills, frequent migration, a lack of freedom to design one's job, long and difficult workdays, and managing many responsibilities.<sup>3</sup> Instead of encouraging responses, it fosters attitudes of passive acceptance of hardship, powerlessness, and conformity. The proportion of women in the construction business is thought to be between 30 and 40 percent.<sup>4</sup>

Construction workers are workers who migrate from other states and regions, abandoning their home villages in pursuit of regular employment. In general, these individuals have nomadic lifestyles and seldom return to their homes or native tribes. Along with their families, they commute between work locations while residing in housing either provided by the owner of the construction company or somewhere nearby interim shelters. Due to the nature of their profession, they are extremely mobile.<sup>5</sup> Despite five decades of independence, such workers continue to be the most abused members of the unorganized labour force. Recent trends indicate that recruiting centres for temporary workers for construction jobs in cities and metropolitan regions have sprung up in all of the nation's major cities.<sup>6</sup> Most migrant construction workers that work in cities and metro areas come from underprivileged backgrounds and lack formal education. Their options are severely constrained by their lack of training and education.<sup>7</sup>

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2 See NATIONAL COMMISSION FOR ENTERPRISES IN THE UNORGANIZED SECTOR (NCEUS), GOVERNMENT OF INDIA, REPORT ON SOCIAL SECURITY FOR UNORGANIZED WORKERS (2006).

3 *Id.*

4 AJAY PRAKASH VERMA, WOMEN LABOUR IN INDIA – A COMPREHENSIVE MANUAL 4 (1996).

5 Devki Natu, *Challenges Faced by Inter State Migrant Workers in India: An Analysis*, 2(4) INT'L J POLICY SCI. LAW 3960, 3964-3968 (2022).

6 Shaik Zabeer, et al., *Quality of Life Among Migrant Construction Workers in Bangalore City: A cross-Sectional Study*, 8(2) J FAMILY MED PRIM CARE 437 (2019).

7 *Id.*

In Indian cities,<sup>8</sup> the building sector is the single greatest employer of migrant labourers, the lowest of the poor. Millions of unskilled porters, bricklayers, and other low-caste labourers have fled to cities to escape terrible rural poverty and find work. These migratory labourers are dispersed throughout the country and go from one place of employment to another with their families. They reside in temporary communities, which are occasionally provided by the construction business, for the duration of the construction project and subsequently relocate to a different location. They often come from the lowest sections of society, and the majority of them are illiterate<sup>9</sup> because they are migrants, they are not registered and thus are denied basic governmental services,<sup>10</sup> Women and children have always been “associated” migrants<sup>11</sup> in the construction industry migratory pattern within India, with the man of the household making the decisive choice to travel. Construction workers are particularly susceptible as related migrants because of fewer economic options and a lack of social support in their new location.

## **B. MIGRANT CONSTRUCTION WORKERS’ STATUS IN THE CONSTRUCTION SECTOR: A GENDER-BASED ANALYSIS**

The construction industry is the world’s and India’s largest employer. Construction employs more than 31 million people, second only to agriculture. More than 35% of construction employees are women, and they are underpaid and subjected to wage discrimination.<sup>12</sup> When males in the construction industry are promoted, women have little possibilities to learn their trade and become masons or supervisors. Women and children make up around one-third

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- 8 Durgam Rajasekhar, et al., *At Times When Limbs May Fail: Social Security for Unorganized Workers in Karnataka* (Working Paper id:331, eSocialSciences, 2006).
  - 9 E. A. Ramaswamy, *Organized Labour and Economic Reforms*, 39 INDIAN JOURNAL OF LABOUR ECONOMICS 438 (1996).
  - 10 Babu P. Ramesh, *Rethinking Social Protection for India’s Working Poor in the Unorganized Sector* (Cross-National Policy Exchange, Asia Social Protection Papers, 2009).
  - 11 A. R. Biswas, *Can Migration Change a Person’s Status*, 38 JOURNAL OF INDIAN LAW INSTITUTE 58 (1996).
  - 12 MICHELLE BUCKLEY, ET AL., MIGRANT WORK AND EMPLOYMENT IN THE CONSTRUCTION SECTOR (2016).

of these labourers. Women are largely unskilled labourers who confront major workplace issues such as wage discrimination, gender and sexual harassment, bad work relationships, lower earnings, and so on. Despite this, the construction industry is overwhelmingly attractive to women. Their abilities are always at the same level and are not improved because they mainly support male workers in the job. Their spouses are frequently alcoholics or have other sexual partners, leaving them in debt. As a result of these problems, women are unable to improve their skills and economic standing in the sector. Female employment in the construction business is quite high, even though they only work as assistants or unskilled labourers. As mentioned, in India, women employees make up a significant share of the construction industry's labour force. Unfortunately, they remain not only unorganized but also unskilled in comparison to male construction workers, who have advanced in their careers from unskilled to skilled, specifically as a mason, carpenter, welder, and electrician due to their gender preference. Women construction workers, on the other hand, begin as unskilled assistants and stay such throughout their careers, making them victims of gender discrimination. Traditions, culture, and conventions, as well as society's attitude towards women, have put women workers at a significant disadvantage.<sup>13</sup> Furthermore, they are disorganized and reliant on their husbands, with no social or economic empowerment.

Part II of the Indian Constitution provides for citizenship rights.<sup>14</sup> Citizenship rights are viewed as basic since they are most necessary for an individual to achieve his full intellectual, moral, and spiritual position. The protection of minimal workplace rights will enable individuals to claim and realize a fair share of the riches. The protection of these rights will facilitate the process of transforming economic prosperity into social equality. As a result, development is associated with the agenda of integrated development. According to the Indian Constitution's Directive Principles of State Policy, the State is required to secure for citizens, both men and women, the right to an adequate means of livelihood, equal pay for equal work for both men and women, protection against abuse and exploitation of workers, economic necessity, protection of

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<sup>13</sup> *Id.*

<sup>14</sup> INDIA CONST. art. 5.



their health and strength, and to secure for children opportunities and facilities to develop in a healthy and free environment. The State is also required to ensure equal justice and free legal aid, to make effective provisions for the right to work, education, and public assistance in cases of undeserved want, to ensure just and humane working conditions and maternity relief, to secure work, a living wage, and a decent standard of living, and to allow workers to participate in industrial management.<sup>15</sup>

## **C. LABOUR SAFETY IN CONSTRUCTION SITES**

There is rising awareness and interest among policymakers, implementers, and labour unions in the need to strengthen social security measures in comparison to other benefits policies for unorganised sector employees. Because most construction workers are unregistered migrants, implementing welfare measures for them is a daunting task. Building and Other Construction Workers Welfare Boards (BOCWWB) are eager to implement a comprehensive social security programme that covers health, old-age income, and accident risks. However, most states' BOCWWBs face challenges in terms of adequate manpower, IT systems, a clear plan of action to register Construction Workers, and so on. Furthermore, access to social security benefits by migrant workers, both inter and intra-state, is only possible through coordinated action at both the source and destination.<sup>16</sup> Through a Memorandum of Understanding (MOU), the Government of India is facilitating an innovative mechanism for strengthened coordination between source and destination states. The MOU signed by the Government of India and the coordinating states might result in the development of a time-bound action plan to expand the coverage of social security benefits for migrant workers and their families in the destination state, notably in brick kilns.<sup>17</sup> Andhra Pradesh, Odisha, Bihar, Jharkhand, Chhattisgarh, and Uttar Pradesh have previously written such MOUs.<sup>18</sup>

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15 INDIA CONST. art. 39.

16 JACOB JOHN, ET AL., A STUDY ON SOCIAL SECURITY AND HEALTH RIGHTS OF MIGRANT WORKERS IN INDIA 59-62 (2020), [https://nhrc.nic.in/sites/default/files/Approved\\_Health%20and%20social%20security%20ISMW\\_KDS-NHRC.pdf](https://nhrc.nic.in/sites/default/files/Approved_Health%20and%20social%20security%20ISMW_KDS-NHRC.pdf).

17 *Id.*

18 *Signing of MoU with Andhra Pradesh*, LABOUR DIRECTORATE, GOVERNMENT OF ODISHA, <https://labdirodisha.gov.in/?q=node/87> (last visited June 24, 2023).

Every effort must be made to raise the level of awareness among employees and management about the importance of health and safety on the job. It is very important to reduce the number of workplace accidents for construction workers all around the world. Many preventive measures have been proposed and implemented to address this issue. Accidents, on the other hand, continue to happen with dismal frequency. As a result, new efficient strategies for preventing workplace accidents are constantly eagerly anticipated. Under the supervision of the Chief Labour Commissioner in India, ministries under the Ministry of Labour and Employment deal with occupational safety and health problems in the construction sector. The Directorate General Factory Advice Service Labour Institute (DGFASLI) offers technical assistance in the construction sector by creating model rules, conducting surveys, and providing training programmes.<sup>19</sup> Workers on construction sites are subject to many labour laws in the country including the Equal Remuneration Act, of 1976, The Building and Other Construction Workers Act, of 1996, among other legislative mechanisms.

## **D. STUDY ON THE SOCIO-ECONOMIC CONDITIONS OF CONSTRUCTION WORKERS**

A study was conducted by the author for which data was obtained from a random sample of 300 construction workers in Devanahalli Taluk of Bangalore's urban and rural districts in Karnataka. The objective of the study is as follows:

- To investigate the socio-economic position of construction employees in the research region.
- To analyze and discover the significant discoveries in construction workers' working conditions in the research region.
- To provide policy suggestions and propose actions to improve the socioeconomic situation of construction employees in the construction sector.

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19 *Directorate General Factory Advice Service and Labour Institutes (DGFASLI)*, MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA, <https://labour.gov.in/organizationsofmole/directorate-general-factory-advice-service-and-labour-institutes-dgfasli> (last visited June 24, 2023).

## **Observations**

- The survey discovered that the majority of construction employees are illiterates; despite comprising the majority of the population, these workers have just elementary or secondary education, accounting for 43 per cent of total respondents.
- According to the findings of the survey, the majority of the sample are women employees. According to the respondents' sources, most of them are from nuclear families. The nuclear family structure encourages women to participate in earning activities, which is why she works with her husband on building projects.
- The research also discovered that 83.3 per cent of female construction employees reported that their standard of living improved after joining the business.
- According to this survey's findings, most construction employees earn between 30 and 70 thousand rupees per year, accounting for 83 per cent of all respondents. The annual expenditure pattern of families reveals that 150 of 300 respondents spent their money on various activities ranging from 30 to 60 thousand rupees.
- The survey suggests that the majority of female construction workers (77.33 per cent out of 300 respondents) are required to perform numerous sorts of construction tasks such as water feeding, material delivery, cement mixing, and stone shaping. This is due to the nature of the industry itself.
- According to the findings of this survey, construction employees indicated several causes for dissatisfaction with their jobs, including poor salaries (57.66%), hard work (42.33%), and long working hours (13%) out of 300 respondents.

## **Recommendations and Policy Implications**

- Since the majority of construction workers are illiterate, it is suggested that a special literacy campaign is needed, particularly for female construction workers. Raising literacy awareness and educating women will not only improve their socioeconomic status but will also help them educate their children. Programmes such as SSA (Sarva Shiksha Abhiyan), RMSA (Rashtriya Madhyamika Shikshana Abhiyan), and RUSA (Rashtriya

Ucchatar Shiksha Abhiyan) are focused on formal education, but the government should prioritize informal education and education of construction workers, particularly women workers. Low salaries and a lack of abilities are caused by illiteracy, and their labour further erodes their wage level. These employees should be taught in their sector as part of the twelfth five-year plan's national skill development programmes to improve their economic and social position.

- Married women are safer and more secure because of their marital status. Migrant women construction workers have an advantage over unmarried employees. Unmarried labourers, widows, and workers separated from their families have all been subjected to exploitation to various degrees. The safety and security of migrant construction workers can be ensured by counselling coworkers and enforcing rules against female harassment. Early marriage is widespread among economically disadvantaged groups. The marriage age norms should be severely enforced among the labouring classes.
- The majority of female construction workers earn between 30,000 and 70,000 rupees per year. An average of around 5000 rupees per month, which is insufficient to lead to a decent standard of living, but those SC, ST, and OBC women workers whose income is less than 30,000 rupees per year, i.e., an average of rupees 2500 per month or an average of rupees 80 per day, which is grossly inadequate to lead at least a subsistence level, are even worse off. No food security bill or health programmes through primary health centres will improve these people's standard of living unless they are covered under various insurance schemes such as health insurance, risk insurance, and accident insurance, and provided with additional benefits. Even a minimal salary can keep them out of poverty.
- This research focuses on construction employees, hence 98.6 per cent are drawn from building construction activities and just 1.4 per cent is drawn at random from road/bridge construction. This research is designed to provide a passing comparison because building construction employees face greater issues than workers in other sectors.
- The work supervisors are primarily exploited in these industries; they should be trained in legal affairs and human relations through the labour department, and it should be made mandatory that all work supervisors be registered with the Karnataka State Building and Other Construction

Workers Welfare Board and given an identification number so that they do not flee after committing a criminal act. Most of these labourers have criminal histories; therefore, after committing a crime, they migrate to new building constructions far away from their homes, and sometimes to another state. Individual identification will put an end to such atrocities against female employees.

## **E. WAY FORWARD**

The construction sector provides much-needed employment opportunities for some of society's poorest and most marginalized members. Women, in truth, are the creators, defenders, and destroyers. All of women's energies, intellect, strength, and skill are devoted to catering to the needs of men, and while literacy among women is increasing in India, women still occupy a disadvantaged position in society; therefore, we should make them aware of their potential and generate a desire in them to acquire skills that will allow them to walk shoulder to shoulder with men. Literacy and education should be provided to all migrant construction workers to raise awareness. Efforts should also be made to educate our males on how to regard women as equal partners in progress. A qualitative approach is urgently required. The government, non-governmental organisations, and males, in general, must all play an important part in making gender parity a reality. It is critical to have equal access to resources, authority, and decision-making.

Lastly, women should be educated and trained to improve their feeling of self-worth and self-esteem, as well as to educate them about their right to good health. As a result, a realistic employment plan must focus on improving employees' educational levels. Women's socio-economic condition can only be improved when a big transformation in society happens, which can be accomplished through mindset transition. The socioeconomic and cultural growth of construction workers must provide them with more choices and influence over their destinies, making them self-reliant and confident.

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## EVALUATING INDIA'S FOREIGN TRADE POLICY VIS-À-VIS- ATMANIRBHAR BHARAT ABHIYAN

*Aparna S\**

### *Abstract*

When the world came to a standstill with the emergence of the unprecedented pandemic in 2020, the Government of India initiated the Atmanirbhar Bharat Abhiyaan, or Self-Reliant India, aimed at encouraging local producers and decreasing reliance on imports through the incentivisation of local and supply networks. However, such an apparent favouring of domestic production over imported products would have significant ramifications as far as international trade is concerned. On one hand, India is bound by its obligations under WTO agreements where it is mandated to abide by the requirement of not extending a favourable or a discriminatory treatment for products based on the country of origin. India also cannot afford to erect trade barriers of such nature that would isolate itself and create difficulties for it to enter into trade agreements with other nations. On the other hand, the impending circumstances in the global scenario have made it a necessity to adopt a protective stance towards home-grown industries and entrepreneurship. Therefore, India is currently facing an ostensible dilemma in its trade policy where it has to reconcile its decision to boost its own imports with its obligations under international trade law.

In this backdrop, the paper seeks to understand how the Atmanirbhar Bharat Abhiyaan would fare when analysed through the prism of international trade law. It then attempts to analyse the Scheme's implications on areas where India is economically

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dependent on foreign countries. Thereafter, the paper explores the repercussions that India is likely to face in its trade negotiations with foreign countries due to the thrust given towards being self-reliant. Thus, the paper endeavours to address whether India's current foreign trade policy and the goals sought to be achieved by Atmanirbhar Bharat Abhiyan are mutually reconcilable.

**Keywords:** Atmanirbhar Bharat Abhiyan, Foreign Trade Policy, Free Trade Agreements, Protectionism, Import Substitution Policies.

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- A. Introduction
- B. Regional Trade Agreements – Rationale and Implications
- C. Recalibrated approach – Enhancing Self-Reliance in Trade
- D. Conclusion

## **A. INTRODUCTION**

The global pandemic in 2020 followed by the Russo-Ukraine war has exacerbated trade tensions resulting in a disruption in supply chains and a crisis for nations which are dependent on imports from other nations to sustain their economies. In India, the crisis was tuned into an opportunity with the launch of the Atmanirbhar Bharat Abhiyan (ANBA) or the Self-Reliant India Scheme which aims at boosting domestic manufacturing so as to reduce dependency on imports and to transform India into a 'manufacturing hub.'<sup>1</sup> This is not a new strategy as India has had a tryst with local production and sourcing of goods with the Swadeshi movement in the early twentieth century.<sup>2</sup> The Make in India initiative, the precursor to ANBA, had similar objectives of boosting India's manufacturing potential but sought to realise this through enhancing the entrepreneurial ecosystem in the country by placing emphasis on 'ease of doing business,' infrastructural initiatives and encouraging Foreign Direct Investments in multiple identified sectors in India.<sup>3</sup> ANBA has taken this mandate forward

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1 MINISTRY OF FINANCE, ECONOMIC SURVEY 2022-2023 (2023).

2 SUMIT SARKAR, SWADESHI MOVEMENT IN BENGAL 1903-1908 (2011).

3 *Major Initiatives – Make in India*, PM INDIA, [https://www.pmindia.gov.in/en/major\\_initiatives/make-in-india/](https://www.pmindia.gov.in/en/major_initiatives/make-in-india/) (last visited May 22, 2023).

by giving an impetus to the production of goods in India and strengthening India's integration in the global value chains by exporting its goods which have been so manufactured locally.<sup>4</sup>

When a country turns 'inwards' by incentivizing its domestic industries and enterprises from 'unfair' foreign competition, it is perceived to be embracing 'protectionism.'<sup>5</sup> Though the traditional measures through which a country implements protectionism is through tariffs or quotas, offering of incentives to domestic producers would also be considered as such a strategy as it comes at the cost of foreign producers wanting to engage in trade.<sup>6</sup> The World Trade Organisation (WTO) has developed rules for implementing checks and balances on this by prohibiting States from adopting policies that extend favouring treatment to the domestic industries in the form of incentives or subsidies and discriminate against the products that are imported from other nations.<sup>7</sup> In this backdrop, the future of successful roll out of ANBA is dependent on India's ability to demonstrate that it is not against the mandates of the WTO and that it does not erect a barrier for its trade with other countries.

India's vision of promoting indigenous manufacturing and thereby bring about a boost in its exports is indeed enterprising and a necessity in the wake of unprecedented events like a pandemic or a war which can aggravate vulnerabilities in the supply chain.<sup>8</sup> However, when such measures are sought to be implemented by overtly incentivising domestic industries and restraining the competitiveness of the products of foreign countries, it is bound to affect India's trade relations. As a country, India has always followed a balanced approach in its foreign policy and has strived to maintain a fruitful trade relationship with most of the other jurisdictions. This is evident from the fact that India has never shied away from entering into bilateral and multilateral trade agreements which

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4 *Atmanirbhar Bharat Abhiyan*, INVEST INDIA, <https://www.investindia.gov.in/atmanirbhar-bharat-abhiyaan> (last visited May 22, 2023).

5 See Alan O. Sykes, *Regulatory Protectionism and the Law of International Trade*, 66 U. CHI. L. REV. 1 (1999).

6 *Id.*

7 See General Agreement on Tariffs and Trade Oct. 30, 1947, 61. Stat. A-11, 55 U.N.T.S. 194; Agreement on Subsidies and Countervailing Measures, Jan. 1, 1995, 1868 U.N.T.S. 397.

8 ECONOMIC SURVEY, *supra* note 1, at 260.



cater to its strategic and fiscal interests.<sup>9</sup> As a country which actively pursues free trade agreements with other countries, India's movement for being self-reliant is bound to attract apprehensions from its trade partners.

In this backdrop, the author evaluates whether India's foreign trade policy, which emphasises on trade liberalisation and the ANBA, which borders on protectionism, present mutually reconcilable goals. In Part II of the paper, the author attempts to give a brief overview about regional trade agreements and how India's trade agreements have impacted its trade policies. In Part III, the author explores the reforms that have been introduced in foreign trade policy as part of being self-reliant and its potential repercussions on India's trade. This part also touches upon the implications that ANBA can have on India's trade relations with its foreign counterparts.

## **B. REGIONAL TRADE AGREEMENTS – RATIONALE AND IMPLICATIONS**

Regional Trade Agreements (RTA) have proliferated on an unprecedented scale over the past four decades. Today, it is hard to find a country that is not a party to some RTA or the other in the form of customs union, Free Trade Agreements (FTA) or an interim agreement.<sup>10</sup> The fundamental idea behind countries entering into RTAs with one another is to offer and receive more favourable treatment with respect to trade concerns.<sup>11</sup> Thus, countries become parties to an RTA in the hope of receiving more benefits in trade than what is meted out to trading partners who are not parties to such an RTA. But, the increased resort to RTAs is driven by more pragmatic concerns as well. Countries, especially the ones that are small or developing, encourage RTAs in order to augment their bargaining power, for gaining more market access and to ensure that they are not isolated.<sup>12</sup>

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9 See Srinath Raghavan, *India as a Regional Power*, in *SHAPING THE EMERGING WORLD: INDIA AND THE MULTILATERAL ORDER* 57 (Waheguru Pal Singh Sidhu, et al., eds., 2013).

10 See Zakir Hafez, *Weak Discipline: GATT Article XXIV and the Emerging WTO Jurisprudence on RTAs*, 79 N.D.L Rev. 879, 880 (2003).

11 PETER VAN DEN BOSSCHE & WERNER ZDOUC, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXTS, CASES AND MATERIALS* 130 (3d ed., 2013).

12 Jo-Ann Crawford & Roberto V. Fiorentino, *The Changing Landscape of Regional Trade*

RTAs are accorded recognition under the trade law regime as they facilitate creation of trade by bringing about a reduction, if not elimination of barriers to trade.<sup>13</sup> The General Agreement on Tariffs and Trade (GATT) 1994 places a thrust on the ability of voluntary agreements such as customs unions of FTAs to achieve a closer integration between the economies of the parties and thereby augment free trade.<sup>14</sup> It also elucidates that there shall be a substantial elimination of duties and other restrictive commercial regulations in both customs union as well as free trade areas for trade in products which are originating in the countries that are parties to it.<sup>15</sup> Although the underlying premise is facilitation of trade, RTAs can also engender trade diversion inasmuch as it incentivises countries to import more goods from its RTA partners and gradually eliminate imports from other countries to which it is not obligated to give a preferential treatment.<sup>16</sup>

Now that the basic premise has been set in the backdrop, it is worthwhile to look into FTAs, which form the major focus area of discussion for this paper. The underlying rationale behind FTAs is also not very different from RTAs inasmuch as they aim to proffer free trade to countries which are parties to the agreement. What needs to be noted is that FTAs also thereby extend to its members a relative protection from countries which are non-members to the agreement.<sup>17</sup> But what could be the driving force behind pursuing agreements with other countries for advancing something that is in one's own national interest? One possible reason could be that countries with larger market access have an incentive to exploit their power in the world markets.<sup>18</sup> As and when import tariffs are put in place, there is a concomitant reduction in the demand

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*Agreements* 16 (World Trade Organization, Discussion Paper No. 8, 2005).

13 Nicolas JS Lockhart & Andrew D Mitchell, *Regional Trade Agreements under GATT 1994: An Exception and its Limits*, in CHALLENGES AND PROSPECTS FOR THE WTO 217 (Andrew D Mitchell eds., 2005).

14 General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194, art. XXIV, ¶4 [hereinafter GATT].

15 *Id.* art. XXIV, ¶8

16 Clinton Shiells, *Regional Trade Blocs: Trade Creating or Diverting?* FIN & DEV. 30 (1995).

17 Jagdish N. Bhagwati, *Preferential Trade Agreements: The Wrong Road*, 27 LAW POL'Y INT'L BUS. 865, (1996).

18 Dani Rodrik, *What Do Trade Agreements Really Do?* 32 J. ECO. PERSP. 73, 80 (2018).

for products exported from other countries which also translates into a reduction in the overall prices of the products in the world market.<sup>19</sup> An equilibrium in this state of affairs would be largely unhelpful as each country would indulge in setting a tariff that it deems to be optimal.<sup>20</sup> In this backdrop, an agreement enforcing free trade actually can help in augmenting the trade prospects of all countries. Moreover, it also tallies with the Ricardian principle of comparative advantage which underscores that countries would prefer to enter into trade agreements even if it has an absolute advantage in manufacturing goods.<sup>21</sup>

### **1. India and its RTAs**

India is part of as many as 10 bilateral agreements ranging from Free Trade Agreements and Early Harvest Schemes to Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA). It has also signed regional agreements and preferential trade agreements with significant trade partners such as the Association for Southeast Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC). After a brief hiatus in engaging in trade negotiations following the walk away from the Regional Comprehensive Economic Partnership (RCEP), India is pursuing free trade negotiations vigorously. An Economic Co-operation and Trade Agreement with Australia has recently come into effect<sup>22</sup> and negotiations with major economies such as UAE, European Union, Australia, Canada and the United Kingdom are underway.<sup>23</sup> Table 1 illustrated below gives a comprehensive overview of the major trade arrangements of which India is a part.

| TABLE 1 – LIST OF INDIA'S MAJOR TRADE AGREEMENTS |                                    |
|--|------------------------------------|
| Preferential Trade Agreements (PTA)              | Free Trade Agreements (FTA)        |
| Asia Pacific Trade Agreement (1975)              | India-Nepal Treaty of Trade (1950) |
| Global System of Trade Preferences (1988)        | India-Sri Lanka FTA (2000)         |

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19 *Id.*

20 *Id.*

21 *Id.*

22 Ministry of Commerce & Industry, *Regional Trade Agreements*, Press Information Bureau (Dec. 15, 2021), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1781867>.

23 *Id.*

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|---|---|
| SAARC Preferential Trading Agreement (1993)   | India-Thailand FTA - Early Harvest Scheme (2004)                                    |
| India-MERCOSUR PTA (2009)                     | India-Singapore Comprehensive Economic Cooperation Agreement (2005)                 |
| India-Chile PTA (2007)                        | Agreement on South Asian Free Trade Area (2006)                                     |
| India-Afghanistan PTA (2013)                  | India-ASEAN Comprehensive Economic Cooperation Agreement (2010)                     |
|   | India-South Korea Comprehensive Economic Partnership Agreement (2010)               |
|   | India-Japan Comprehensive Economic Partnership Agreement (2011)                     |
|   | India-Malaysia Comprehensive Economic Cooperation Agreement (2011)                  |
|   | India-Bhutan Agreement on Trade, Commerce and Transit (2016)                        |
|   | India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (2021) |
|   | India-UAE Comprehensive Economic Partnership Agreement (2022)                       |
|   | India-Australia Economic Cooperation and Trade Agreement (2022)                     |
| <i>Source: Press Information Bureau, 2022</i> |   |

India's recalibrated strategy to pursue more trade agreements with other countries may be attributed to many factors: *Firstly*, India has set an ambitious target of accomplishing exports to the tune of \$1 trillion by 2030.<sup>24</sup> In this backdrop, it may become necessary to enter into trade agreements with other countries so as to ensure greater market access for its goods and more resilient supply chains.<sup>25</sup> *Secondly*, India has greater chances of being a supplier of goods and capital in the wake of developed countries altering their economic policies so as to reduce their dependence on China.<sup>26</sup> *Thirdly*, although India

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24 Press Trust of India, *Goods and Services Exports May Reach \$1 Trillion Each by 2030: Piyush Goyal*, BUSINESS STANDARD (Feb 21, 2023), [https://www.business-standard.com/article/economy-policy/goods-and-services-exports-may-reach-1-trillion-each-by-2030-piyush-goyal-123022101072\\_1.html](https://www.business-standard.com/article/economy-policy/goods-and-services-exports-may-reach-1-trillion-each-by-2030-piyush-goyal-123022101072_1.html).

25 RBI Bulletin, *What Ails India's Apparel Exports?*, RESERVE BANK OF INDIA (Dec 15, 2021), [https://www.rbi.org.in/Scripts/BS\\_ViewBulletin.aspx?Id=20692](https://www.rbi.org.in/Scripts/BS_ViewBulletin.aspx?Id=20692).

26 Surendar Singh & Suvajit Banerjee, *Is There Any Dichotomy between India's New FTA Strategy and Its Trade Policy?*, 57 ECO. & POL. WKLY. 25 (2022).

has bilateral and multilateral trade pacts with many countries, its abstinence to become part of major trading blocs such as RCEP and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) has foreclosed its opportunities to gain preferential market access and may also displace supply chains, thereby ousting India from existing networks of production.<sup>27</sup>

## **2. RTAs and its impact on India's trade**

There is no broad consensus on the impact of RTAs in boosting trade with divided opinions amongst economists as to whether they are 'stumbling blocks' or 'building blocks' for trade facilitation.<sup>28</sup> Most of the available literature indicates a largely positive effect of RTAs in boosting India's trade prospects. It is believed that of all RTAs, FTAs in particular, have been able to enhance India's export efficiency to its partner countries as opposed to PTAs.<sup>29</sup> However, studies have also pointed out how RTAs per se have not triggered the proliferation of trade and that their success is largely illusory owing to existence of substantial trade volume even prior to India entering into RTAs with other countries.<sup>30</sup> For instance, although India's bilateral trade in exports and imports increased post RTAs, the partner countries were able to increase the imports of those goods for which they received preferential treatment.<sup>31</sup> However, most of the commodities that came within the ambit of India's exports were those which did not receive preferential treatment under any of its RTAs, indicating that RTAs per se had limited role in enhancing India's exports in its trade with other countries.<sup>32</sup>

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27 *Id.*

28 JAGDISH BHAGWATI, *TERMITES IN THE TRADING SYSTEM: HOW PREFERENTIAL AGREEMENTS UNDERMINE FREE TRADE* (2008); Richard Baldwin, *Multilateralising Regionalism: Spaghetti Bowls as Building Blocks on the Path to Global Free Trade*, 29 *THE WORLD ECONOMY* 1507 (2006).

29 Leena Ajit Kaushal, *Impact of Regional Trade Agreements on Export Efficiency – A Case Study of India*, 10 *COGENT ECO. & FIN.* 1 (2021).

30 Manoj Pant & Anusree Paul, *The Role of Regional Trade Agreements in the case of India*, 33 *J. ECO. INTEGRATION* 538 (2018).

31 Sejuti Jha, *Utility of Regional Trade Agreements: Experience from India's Regionalism* 13 (Asia-Pacific Research and Training Network on Trade Working Paper Series, No. 99 2011).

32 *Id.*

Despite increase in overall trade, RTAs have largely resulted in trade relationships heavily skewed towards partner countries, evident from an increase in the latter's exports to India.<sup>33</sup> This is evident from how India's FTA with ASEAN resulted in the ASEAN countries gaining more market access vis-à-vis partially and fully processed agricultural products whereas reduced demand for local agricultural products detrimentally affected India's domestic agricultural sector.<sup>34</sup> India's benefits are marginal considering the fact that even with FTAs, partner countries supply intermediate goods, for which there is much demand in India, at high prices even though they may be justified on the ground that it is lower compared to the prevalent import prices for India.<sup>35</sup>

Even though there has been an increase in exports to ASEAN countries and Japan, India has not been able to mitigate its large trade deficit with these countries.<sup>36</sup> Perplexingly, India's exports to its largest trading partners U.S and China, with which it also has the largest trade deficits, has been on the rise even without FTAs. This perhaps makes a strong case for the argument that FTAs in themselves have not been able to have much impact in boosting India's trade.<sup>37</sup> It is worthwhile to recall that this was one among the major reasons for India walking out of the RCEP negotiations.<sup>38</sup> Speculations were rife that joining RCEP would not have augured well for India's policies targeted at being 'self-reliant' and that it would also destabilize India's domestic manufacturing sector owing to intense competition from the exports of capital, intermediate and consumer goods from the partner countries.<sup>39</sup>

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33 Priyanka Khatri & Chanwahn Kim, *Impact of India's Free Trade Agreement with ASEAN on Its Goods Exports: A Gravity Model Analysis*, 11 *ECONOMIES* 1 (2023).

34 Smitha Francis, *A Sectoral Impact Analysis of the ASEAN-India Free Trade Agreement*, 46 *ECO. & POL. WKLY.* 46, 54 (2011).

35 Chandrima Sikdar & Biswajit Nag, *Impact of India-ASEAN Free Trade Agreement: A Cross-Country Analysis Using Applied General Equilibrium Modelling* 42 (Asia-Pacific Research and Training Network on Trade Working Paper Series No. 107, 2011).

36 Amit Kapoor & Akshay Bhambri, *A Preferential Route: Effectiveness of FTAs in Indian Exports*, *THE ECONOMIC TIMES* (May 04, 2022), <https://economictimes.indiatimes.com/news/economy/foreign-trade/a-preferential-route-effectiveness-of-ftas-on-indian-exports/articleshow/91294341.cms?from=mdr>.

37 *Id.*

38 Bibek Ray Chaudhuri & Debashis Chakraborty, *India's Withdrawal from RCEP Deciphering Commodity-level Undercurrents*, 48 *ECO. & POL. WKLY.* 26 (2021).

39 Biswajit Dhar, *India's Withdrawal from the Regional Comprehensive Economic Partnership*, 45 *ECO. & POL. WKLY.* 59 (2019).

Does this mean that India should abstain from RTAs with other countries as it does not have any concrete impact in increasing India's market share in these countries or in plugging the widening trade-deficit? Jumping into such a conclusion is likely to prove fatal. Being part of FTAs is inevitable for better economic integration and improved market access. It is the consumers and firms in India which would be put in a disadvantageous situation if India chooses not to enter into RTAs as they would be deprived of the ability to procure imports at preferential rates which would be available exclusively for partner countries.<sup>40</sup> As long as India lags behind in production of raw materials and intermediate goods domestically, not sourcing it at competitive rates would end up being counterproductive as it would make domestic manufacturing a costly affair.<sup>41</sup> The problem lies not in India becoming a party to the FTAs but in its inability to improvise its exports by taking advantage of the expanded market access that FTAs throw open. Therefore, the need of the hour is to boost India's competitiveness in domestic manufacturing and to enter into FTAs that can enhance its domestic productive linkages.<sup>42</sup>

## **C. RECALIBRATED APPROACH – ENHANCING SELF-RELIANCE IN TRADE**

### ***1. What Atmanirbhar Bharat Abhiyan means for India's trade***

India's Atmanirbhar Bharat Abhiyan (ANBA) is an ambitious policy that aims to enhance India's domestic manufacturing capacity and thereby increase its exports, a vision in congruence with the aforementioned argument about the need to boost competitiveness of Indian domestic entities.<sup>43</sup> One of the significant measures undertaken in this is the Production Linked Incentive (PLI) Schemes which seek to incentivise domestic manufacturing of goods and thereby reduce dependency on imports. The Scheme has identified 13 different

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40 See Asha Sundaram, *India's RCEP Exit and its Regional Future*, EAST ASIA FORUM QUARTERLY 30 (2022).

41 Deeparghya Mukherjee, *India's Trade Policy and GVCs: A Comment on Recent Policy Changes for Selected Sectors*, 57 ECO. & POL. WKLY. 10 (2022).

42 Smitha Francis & Murali Kallummal, *India's Comprehensive Trade Agreements: Implications for Development Trajectory*, 48 ECO. & POL. WKLY. 109 (2013).

43 ECONOMIC SURVEY, *supra* note 1.



sectors where manufacturers are provided with fiscal incentives depending on the extent or percentage of domestically sourced content that is present in the goods produced by them.<sup>44</sup>

While PLI Schemes have its heart in the right place, it is fraught with hurdles in its conception. Its design focusing on sector-specific incentives ignore the fact that this assumes the availability of steady supply of raw materials at competitive prices and a large domestic market.<sup>45</sup> This underscores why India might not be able to reduce its dependency on imports from other countries, at least for the raw materials and intermediate goods that are necessary for the completion of domestic manufacturing of goods. Ever since the roll-out of ANBA, India has consistently maintained the stance that it does not seek to become 'protectionist' in nature and that its only focus is to transform India into a global manufacturing hub, which can further lead to better integration with the global value chain as India's export potential would be enhanced further.<sup>46</sup>

It is worthwhile to recall that a similar initiative had been adopted by India in 2015 called Merchandise Exports from India Scheme which sought to compensate manufacturers and exporters for the payments incurred by them vis-à-vis customs and duties.<sup>47</sup> This Scheme was also purported to promote domestic manufacturing and exports from India.<sup>48</sup> However, India had to roll this back as WTO found this to be an export subsidy.<sup>49</sup> A similar challenge could be made for PLI Scheme, citing a violation of the National Treatment obligation under GATT 1994 and the stipulations under the Agreement on Trade-Related

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44 *Id.*

45 Surendar Singh & Sakshi Abrol, *Many Gaps in the PLI Scheme*, THE HINDU BUSINESSLINE (Mar. 19, 2023), <https://www.thehindubusinessline.com/opinion/many-gaps-in-the-pli-scheme/article66639145.ece>.

46 Press Trust of India, *Atmanirbhar Bharat is Neither 'Isolationism' nor 'Protectionism': Nirmala Sitharaman*, TIMES OF INDIA (Oct. 12, 2022), [http://timesofindia.indiatimes.com/articleshow/94796303.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/94796303.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).

47 Directorate General of Foreign Trade, Foreign Trade Policy, 2015-2020 (issued on Dec. 05, 2017).

48 *Id.*

49 Panel Report, *India – Export Related Measures*, WTO Doc. WT/DS541/R (adopted on Oct. 31, 2019).



Investment Measures (TRIMS).<sup>50</sup> It is also amenable to a challenge under the Agreement on Subsidies and Countervailing Measures as an import substitution subsidy.<sup>51</sup> If PLI Schemes are perceived to be protectionist in its stance, it is likely to prove detrimental to India's ongoing FTA negotiations.

## ***2. Rules of Origin in FTAs and Self-Reliance***

A paradigmatic shift has been recently brought about in the way Rules of Origin (RoO) requirements are mandated in FTAs concluded by India and other trading partners. As the name indicates, RoOs are laws and regulations that are promulgated by countries to determine the country from which a particular product that is sought to be imported into their country has originated.<sup>52</sup> RoOs may be considered as non-preferential if the underlying purpose is to distinguish between domestic and foreign goods so as to impose safeguard measures such as antidumping and countervailing duties or tariff quotas.<sup>53</sup> It is considered to be preferential if RoOs are used for defining the conditions under which a product is to be regarded as originating from a country so as to accord preferential treatment to the concerned products.<sup>54</sup> Preferential RoOs are also significant inasmuch as they play a crucial role in ensuring that countries do not resort to FTAs as a tool for availing tariff benefits that would not otherwise be available to them.<sup>55</sup> However, RoOs are also capable of being a trade barrier inasmuch as they qualify only goods that meet the stipulated standards for a preferential treatment under RTAs.<sup>56</sup>

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50 See Surendar Singh & Ram Singh, *Revisiting the Debate on Import-Led Substitution and Export-Led Industrialization: Where Is India Heading Under Self-Reliant India?*, 56 J. WORLD TRADE 111 (2022).

51 *Id.*

52 GATT Agreement on Rules of Origin, Sept. 20, 1996, 1868 U.N.T.S. 397.

53 A. Estevadeordal & K. Suominen, *Mapping and Measuring Rules of Origin Around the World*, in OLIVER CADOT, ET AL., *THE ORIGIN OF GOODS: RULES OF ORIGIN IN REGIONAL TRADE AGREEMENTS* 72 (2006).

54 *Id.*

55 Mariana C. Silveira, *Rules of Origin in International Trade Treaties: Towards the FTAA* 14 ARIZ. J. INT'L & COMP. L. 411, 414 (1997).

56 T.N Doan & Y. Xing, *Trade Efficiency, Free Trade Agreements and Rules of Origin*, J. ASIAN Eco. 33 (2018).

India has not adopted a uniform policy regarding RoO and has tailor-made them according to the trade benefits and arrangements accruing from its various trade agreements.<sup>57</sup> This has often resulted in different degrees of preferential treatment being extended to each country.<sup>58</sup> This has further paved way for non-FTA partners attempting to export goods to India through a country with which India has entered into an FTA so as to take advantage of the differential duty structures.<sup>59</sup> A case in point is the increasing import of palm oil from Nepal and Bangladesh. Palm oils, which are sourced from Malaysia and Indonesia are routed through Nepal and Bangladesh, as imports from these countries are subjected to lower import duties according to the terms and conditions of the South Asian Free Trade Agreement (SAFTA) 2006.<sup>60</sup> This is a blatant violation of SAFTA as it mandates RoO requirements for the exporting country to avail the preferential duty benefits.<sup>61</sup> Similar concerns are also being raised about increasing imports of accessories and parts of printers from Singapore, which are in fact sourced from China, thereby leading way for Chinese products to make a backdoor entry to India through its FTA partners.<sup>62</sup>

The proliferation of imports from other countries through India's FTA partners and the rampant flouting of RoOs to gain preferential market access are detrimental to India's vision of becoming self-reliant as it hampers the domestic manufacturing sector by making it inefficient to expand, diversify and compete in the global market.<sup>63</sup> Realizing this, India has come up with a revamped strategy to address the problem of rising imports from non-FTA partners. In 2020, it introduced the Customs (Administration of Rules of Origin under Trade Agreements) Rules (CAROTAR) which aims to strengthen

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57 See V Lakshmi Kumaran, *Rules of Origin and FTAs: Major Issues for India*, 15 GLOBAL TRADE & CUSTOMS J. 146 (2020).

58 *Id.*

59 Surendar Singh & Utkarsh R. Mishra, *Reliance on Non-tariff Measures for Self-Reliant India: An Analysis of India's New Trade Policy Orientation*, 17 GLOBAL TRADE & CUSTOMS J. 441 (2022).

60 Surendar Singh & Ram Singh, *Is India Heading Towards Trade Protectionism: An Analysis of CAROTAR Rules?*, 5 INT'L J. BUS. & ECO. 129, 136 (2020).

61 *Id.*

62 *Id.* at 137.

63 Surendar Singh & Ram Singh, *Revisiting the Debate on Import-Led Substitution and Export-Led Industrialization: Where Is India Heading Under Self-Reliant India?*, 56 J. WORLD TRADE. 111 (2022).

the existing certification process and weed out misuse of preferential duties.<sup>64</sup> Broadly speaking CAROTAR makes it mandatory for importing firms to furnish information regarding the origin of a product, including the value of local content involved in it and compliance with product specific RoOs.<sup>65</sup> If the information is not furnished, claims for preferential treatment of goods may be rejected.<sup>66</sup> Moreover, if the RoO are not complied with for a particular consignment, then all other antecedent and subsequent claims for availing preferential tariff on identical goods from the same importing firm can be rejected.<sup>67</sup>

Although CAROTAR has been introduced to combat legitimate concerns, it poses significant impediments as far as India's trade policy is concerned. The stringent requirements related to origin of products sought to be imported and the possible deprivation of preferential benefits if a product fails to adhere to the criteria undermines the right of preferential market access of the concerned countries which are parties to the FTA.<sup>68</sup> The strict regulatory and compliance requirements under CAROTAR are likely to place undue burden on those sectors which are dependent on imports and value chain, rendering them uncompetitive in world trade.<sup>69</sup> Moreover, it may also hamper India's trade prospects with these countries as they may also resort to similar protectionist measures.<sup>70</sup> Let us consider a hypothetical scenario to understand this better. Suppose there is an FTA concluded between U.S.A and Canada which necessitates that a fixed percentage of imported products should have been locally sourced from any of the North-American countries. This is, in effect, a protectionist measure much akin to the ones imposed by India with its FTA partners. However, as is evident from the scenario, this kind of a mandate of local origin can be a disincentive for countries to import products which are

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64 Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020.

65 *Id.*

66 *Id.*

67 *Id.*

68 Singh & Banerjee, *supra* note 26.

69 Ram Singh & Surendar Singh, *Restricting Third Country Imports: Boon or Bane for India's Foreign Trade?*, 56 ECO. & POL. WKLY. 15 (2021).

70 Singh & Banerjee, *supra* note 26.

sourced from India.<sup>71</sup> Therefore, while engaging in any imposition of local content requirements in rules of origin, it is worthwhile to bear in mind that this may also be counter-productive by curtailing access to the markets of countries who are outside the purview of any FTAs of which India is a party.

It is pertinent to note that many of India's FTA partners have expressed concerns about the recent impetus to self-reliance and concomitant shifts in its trade policies. The European Union has recently passed a resolution wherein it has enumerated its apprehensions regarding India's undertakings vis-à-vis Make in India and Atmanirbhar Bharat which can impede market access of countries within the fold of EU.<sup>72</sup> In a review of India's Trade Policy at the WTO, many of its FTA partners have raised concerns regarding the CAROTAR Rules. Indonesia raised an argument that the rules are not in consonance with the spirit of trade liberalization flowing from the India-ASEAN FTA whereas South Korea pointed out that the rules would act as a hindrance to FTAs inasmuch as it increases the cost of application of preferential tariffs.<sup>73</sup>

### ***3. Ambiguous stance of self-reliance***

Broadly speaking, the Atmanirbhar Bharat Abhiyan strives to transform India into a manufacturing hub which would be instrumental in meeting its domestic requirements as well as producing surplus for boosting its export volume.<sup>74</sup> While the vision per se is harmless, the manner in which it has been given impetus through granting of production subsidies subject to local content requirements, has raised serious concerns about India engaging into import substitution policies in order to boost its domestic manufacturing. Commentators have argued that with the launch of ANB, India has forged a

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71 See Anuradha R.V, *Regional Trading Agreements: Need for a Coherent Policy Framework for India's Negotiating Strategy*, 1 JINDAL GLOBAL L. REV. 197, 202 (2009).

72 European Parliament Resolution on the Indo-Pacific Strategy in the area of Trade and Investment, P9\_TA(2022)0276 (passed on July 5, 2022), [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0276\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0276_EN.pdf).

73 Asit Ranjan Mishra, *FTA Partners Upset Over India's New Rules to Trace Goods' Origin*, LIVEMINT (Mar 15, 2021), <https://www.livemint.com/news/india/fta-partners-upset-over-india-s-new-rules-to-trace-goods-origin-11615743367536.html>.

74 ECONOMIC SURVEY, *supra* note 1.

path towards contemporary neo-mercantilism, where the underlying push is not for establishing autarky but for making disruptions in India's economic relations and transforming global rules for ensuring that they cater to India's business interests.<sup>75</sup> This is reflected in India's official stance which underscores that there is no inherent contradiction between the country vouching for ANB on the one hand and entering into FTAs on the other hand.<sup>76</sup> It unequivocally states that the underlying focus of ANB is not protectionism; rather, it aims to improve domestic manufacturing and derive benefits from trade with other countries by continuing to be closely integrated with the global value chain.<sup>77</sup>

While this is indeed an aspirational goal, the manner in which it has been conceived raises perturbing challenges primarily because it seems to forge a middle path between two seemingly irreconcilable goals of protectionism and trade liberalisation. The foremost amongst them would be India's large trade deficit with Japan, China and South Korea, attributable to its overwhelming dependency on these countries for raw materials and consumer goods.<sup>78</sup>

More outward-looking approach and better integration with other countries is an inevitable part and parcel for taking advantage of opportunities in trade. As stated above, the underlying principle of ANB is to ensure ample manufacturing of products that are sufficient to meet domestic requirements and to export whatever emerges as surplus. This is indeed a necessity in the wake of repercussions of unprecedented instances such as global pandemic and wars. For ANB to translate into a successful policy, there should be lesser imports and more exports. However, as most countries are turning into inward-looking policies in order to combat similar socio-economic upheavals that they have been subjected to, who would be willing to encourage exports from India remains an unaddressed concern.<sup>79</sup>

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75 Priya Chacko, *A New Quest for Self-Reliance: East Asia and Indian Economic Nationalism*, 2 J. INDIAN & ASIAN STUD. 1, 11 (2021).

76 Press Trust of India, *supra* note 46.

77 *Id.*

78 Arjun Gargeyas, *India in the Era of 'Silicon Diplomacy'* (Observer Research Foundation Issue Brief No. 593, Dec. 2022).

79 Biswajit Mandal, et al., *Corona Calls for Revival of Globalisation vs. Deglobalisation Debate – Relevance of Atmanirbhar Bharat*, in DEVELOPMENT POLICY MAKING: CHALLENGES AND CONCERNS 77, 82 (Aparna Kumar Chattopadhyay & Soumyadip Chattopadhyay, eds., 2021).

It is also worthwhile to note that India's erstwhile success with booming exports in the wake of liberalisation clearly points towards the need for growth to be balanced by openness in trade. In certain sectors such as leather and clothing, openness is an existential necessity as the underlying components and parts are sourced from different countries.<sup>80</sup> That achieving a proliferation in exports would require embracing more open trade policies is evident from a perusal of the strategies adopted by China and Vietnam where foreign share in textiles and clothing was more than 40% when it transformed itself into an export hub whereas the corresponding figure for India is still a dismal 16%.<sup>81</sup>

What follows from this is that India cannot afford to close its borders and resort to staunch protectionist measures for transforming itself into a manufacturing hub. Openness of trade is inevitable for exporting its indigenously manufactured products to the global market. Reconciling its vision for ANBA with its foreign trade policy is therefore, a vital necessity for it to successfully navigate in both these territories.

## D. CONCLUSION

India's vision for being 'Self-Reliant' is not totally untoward and is pragmatic considering the fact that heavy dependency on imports from other countries for meeting its needs cannot be a sustainable strategy. However, reconciling this with its RTAs with other countries brings its own challenges.

One crucial issue in PLI Schemes is how incentives are heavily dependent on the percentage of local content that can be demonstrated to have been involved in its manufacturing. Although this may seem to be in consonance with ANBA, it overlooks the fact that it does not address India's import dependency on other countries for many of the intermediate goods such as wafers and ingots in solar cells, integrated circuits active pharmaceutical ingredients etc.<sup>82</sup> An overwhelming reliance on imports is also manifest in sectors such

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80 Shoumitro Chatterjee & Arvind Subramanian, *India's Inward (Re) Turn: Is it Warranted? Will it Work?* (Asoka Centre for Economic Policy, Policy Paper No.1, 2020).

81 *Id.*

82 Priya Chacko, *supra* note 75, at 19.

as electrical vehicles and other electrical equipment where the primary and critical components involved in its manufacturing are imported.<sup>83</sup> Moreover, PLI Schemes overtly prefer capital-intensive sectors than labour-intensive sectors over which India has an advantage and fails to take into account the inherent heterogeneity of firms.<sup>84</sup> An overhaul of PLI Schemes is important for resolving the anomaly of having to import raw materials on the one hand and striving to promote self-reliance on the other. It is equally important to place due emphasis on enhancing research and development so as to bolster competition through innovation, lest it jeopardise the prospects of domestic and mid-segment players against the foreign competition.<sup>85</sup> Innovation-led manufacturing should be promoted as this would help India in off-shooting the troubles posed by intellectual property regime.<sup>86</sup>

India cannot be self-reliant without achieving self sufficiency in manufacturing of both the input and final goods. Even then, its vision of becoming a global manufacturing hub can be realised only when its manufactured goods find demand within the territories of other countries. Hence, India cannot stand to lose the gains that accrue from trade with other countries between its policy of 'self-reliance' and its foreign trade policy is crucial.

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83 PRODUCTION LINKED INCENTIVE SCHEME: MAKING INDIA GLOBALLY COMPETITIVE, CONFEDERATION OF INDIAN INDUSTRY (2021).

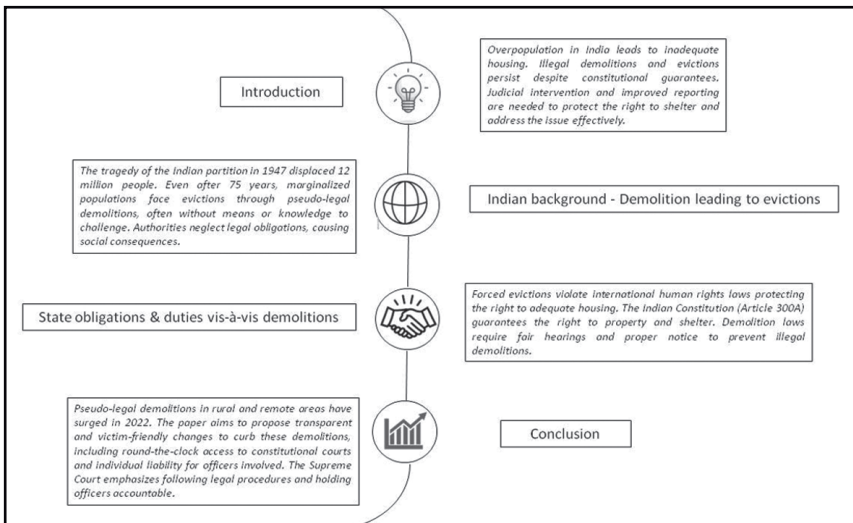
84 Gagandeep Sharma & Surendar Singh, *PLI Scheme: A Return to Pre-Reforms Era?*, The Hindu BusinessLine (Jul 10, 2022), <https://www.thehindubusinessline.com/opinion/a-return-to-pre-reforms-era/article65576845.ece>.

85 Debashis Chakraborty & Julien Chaisse, *The Mystery of Reciprocal Demand for Regional Trade Partnership: Indian Experience in RCEP Regional Value Chains*, 14 L. & DEV. REV. 163, 207 (2021).

86 SELF-RELIANT INDIA: APPROACH AND STRATEGIC SECTORS TO FOCUS, EXIM BANK OF INDIA (2020).

# A SOCIO-POLICY ANALYSIS OF THE EFFECTIVENESS OF JUDICIAL REMEDIES AVAILABLE IN CASES OF ILLEGAL DEMOLITION IN INDIA – STATE POLICY VIS A VIS HUMAN RIGHTS

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## *Abstract*

This paper presents a socio-policy analysis of the effectiveness of judicial remedies available in cases of illegal demolition in India, with a focus on state policy and human rights. Despite the constitutional right to shelter and clear regulations, illegal demolitions and subsequent evictions remain a major issue. The government often executes pseudo-legal demolitions, disregarding prohibitory orders from the apex court. The paper highlights the unjust treatment of slum dwellers, who lack access to dignified

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housing due to the state's inaction in creating shelters. It explores the relationship between access to courts and the right to shelter, aiming to develop effective policies for addressing illegal demolition cases. The historical background of demolitions leading to evictions in India is examined, emphasizing the arbitrary and whimsical actions of authorities and their disregard for legal protections. The obligations and duties of the state concerning demolitions are discussed, drawing on international legal frameworks that safeguard the right to adequate housing. The study also delves into Indian constitutional provisions that protect the right to property and shelter. The paper concludes by addressing the escalating pseudo-legal demolitions in rural and remote areas, where victims face limited access to legal help and courts. The importance of due process and proper notice is emphasized, with the court's recommendation for personal service and alternative communication methods. Overall, the paper seeks to promote transparency and victim-friendly measures, curbing the rising number of pseudo-legal demolitions and safeguarding the rights of the affected population.

**Keywords:** Judicial Remedies, Human Rights, State Policy, Demolition, India.

## **Contents**

- A. *Introduction*
- B. *Indian Background – Demolitions leading to Evictions*
- C. *State Obligations and Duties vis – a – vis Demolitions*
- D. *Way Forward*

## **A. INTRODUCTION**

One of the most highlighted issues in the Indian subcontinent since the independent era has been overpopulation, leading to a lack of proper housing for the citizens of the country. This problem has been historically provoked by the unapologetic act of partition in the latter half of the 1940s. Though the country has clear regulations and laws regarding the right to shelter which is a constitutional right, the recurring problem of illegal demolition and subsequent eviction of the downtrodden has always been a major issue before the constitutional courts of the land and even in the 75<sup>th</sup> year of our

independence, we must witness the brutality of pseudo-legal demolitions executed by the government despite clear prohibitory orders passed by the Apex court of the country.

India is a socialist state in spirit as per the Indian Constitution; hence, it cannot have the agenda of the impoverishment of a citizen. It is not the fault of millions of slum dwellers who accrue a major part of our urban and suburban population that they need to stay in slums, illegally and through undignified and inhuman conditions. It is the inaction of the State, in creating shelters that has led to this situation.

Hence, the perception that slums are illegal and the slum dwellers have no rights in comparison to demolition as a state policy, can never be justified through the lens of human rights. The State believes that curtailing or removing/destroying slums is an action to clean up the city to prove its efficiency in town planning and management, but the State does not ponder on the fate of the dwellers residing in them. This idea has been the backbone of any demolition drive in the subcontinent and a big backlash to the right to shelter, a fundamental human right recognized under Article 300A<sup>1</sup> of the Indian Constitution and the right to a dignified life interpreted by our constitutional courts under Article 21 of the Constitution.<sup>2</sup>

The Delhi High Court, in the cases of *Sudama Singh* (2010),<sup>3</sup> and *Ajay Maken* (2019),<sup>4</sup> held that before causing an eviction, the State must conduct a survey of all persons facing evictions and check their eligibility under existing schemes for alternate means of accommodation.

We can see that according to various NGOs, only a handful of cases of illegal demolitions reach the judicial lens of courts, whereas most cases of illegal demolition go unheard of without any legal intervention. Thus, the spirit of our paper would incorporate proper reporting and judicial intervention in illegal cases of demolition and most importantly we would strive to create a

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1 INDIA CONST. art. 300A.

2 INDIA CONST. art. 21.

3 *Sudama Singh v. Government of Delhi*, 2010 SCC OnLine Del 612.

4 *Ajay Maken v. Adesh Kumar Gupta*, (2013) 3 SCC 489.

relationship between access to courts and other adjudicating authorities with the right to shelter which will result in an effective policy for the redressal of cases of illegal demolition in the country.

## **B. INDIAN BACKGROUND-DEMOLITIONS LEADING TO EVICTIONS**

Historical figures indicate that in the tragedy of the Indian partition of 1947, around 12 million<sup>5</sup> people were relocated but when we delve deeper into this concept, we see the sorrow and misery of these 12 million people, who had to leave their homes and flee overnight. Yet even 75 years after this horrific experience we still use the veil of legal tools to evict the poor and the marginalized population of our country without even thinking about the social consequences for this population who are victims of eviction in the garb of pseudo-legal demolitions that are taking place across the country.

Most of these people do not even have the means or the finances to challenge the matter before the appellate institutions or courts of law or are simply ignorant of the legal protections available and hence in most cases the authorities just follow regulations, in theory, to protect themselves from any legal hassle but in the ground, their actions are arbitrary and whimsical in nature with absolutely zero botheration about the legal obligations that are vetted to them to protect the rights of these people. A classic example of this would be the case of the Hampi eviction<sup>6</sup> wherein the committee deciding the demolition of the illegal encroachers did not even have representation from the local panchayat, clearly indicating that the committee had already preconceived in their minds the outcome of the decision violating the basic tenet of any administrative hearing i.e., *Audi Alterum Partem*.<sup>7</sup> This pattern of not giving an equal hearing to the

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5 C. Ryan Perkins, *1947 Partition of India & Pakistan*, STANFORD LIBRARIES, <https://exhibits.stanford.edu/1947-partition/about/1947-partition-of-india-pakistan>. (last visited Dec. 16, 2022).

6 Manu Aiyappa, *One Year After Forced Eviction at Hampi, They Still Live in Tent*, THE TIMES OF INDIA (Sep. 18, 2012), <https://timesofindia.indiatimes.com/city/bengaluru/one-year-after-forced-eviction-at-hampi-they-still-live-in-tents/articleshow/16451450.cms>.

7 Ashwini D, *Audi Alteram Partem*, LEGAL SERVICES INDIA, <https://www.legalserviceindia.com/legal/article-46-audi-alteram-partem.html> (last visited Dec. 16, 2022).

affected group before the demolition process has been identified by various High Courts across the country while hearing writ matters, but unfortunately, these observations have all been made after the damage has been caused. This system has ripped off the principles of protection and prevention which are core to our justice system. In the recent case of illegal demolitions in UP even the Supreme Court has observed that “*no demolition can take place without following the due process of law*”<sup>8</sup> clearly stating that the Rule of Law should prevail in rendering protection to the citizens. It is pertinent to note that even in this case logged as recent as 2022, the contention of this case was the same age-old issue of the non-deliverance of a chance for proper hearing of the affected parties by the State of U.P before the execution of the pseudo-legal demolitions.

## C. STATE OBLIGATIONS AND DUTIES VIS A VIS DEMOLITIONS

The State must refrain from using any kind of force and protect the common ordinary citizens against forced evictions from their homes and land. This arises from many international legal accessions that aim to preserve the common human right to adequate housing and other related human rights. Now such rights are enshrined in international legal documents such as the Universal Declaration of Human Rights 1948,<sup>9</sup> the International Covenant on Economic, Social and Cultural Rights (Article 11, para 1),<sup>10</sup> the Convention of the Rights of the Child (Article 27, para 3), the respective non-discrimination principles as enshrined in Article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women, and Article 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>11</sup>

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8 Priya Kumari Shukla, *UPSC Key-June 17, 2022: Know the Relevance of ‘Chalukya Style’ to ‘Black Death’ to ‘Capital Punishment’ for UPSC CSE*, THE INDIAN EXPRESS, (Jun. 17, 2022), <https://indianexpress.com/article/upsc-current-affairs/upsc-key-june-17-2022-know-the-relevance-of-chalukya-style-to-black-death-to-capital-punishment-for-upsc-cse-7975900/>.

9 *Universal Declaration of Human Rights*, AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/> (last visited Dec. 18, 2022).

10 International Covenant on Economic, Social and Cultural Rights (1966), art. 11(2).

11 International Convention on the Elimination of All Forms of Racial Discrimination (1969), art. 5.

The study of human rights jurisprudence is remarkably in consonance with the approach to an encompassing attitude towards the very essence of the fact that protection, safeguard, and upliftment of human rights is something very fundamental to all citizens of a State, and such is to be looked after by the State itself. Such views can be obtained by studying Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and Article 16(1) of the Convention on the Rights of the Child. Article 17 of ICCPR<sup>12</sup> states that “*no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence*” and further is illustrated in Article 16(1) of the Convention on the Rights of the Child.<sup>13</sup> Similar references shall include Article 21 of the 1951 Refugee Convention,<sup>14</sup> Article 16 of the International Labour Organisation Convention<sup>15</sup> no. 169 which studies the indigenous and tribal people of independent countries (1989), and Article 49 of the Geneva Convention related to the Protection of Civilian Persons in Times of War (1949).

In the Indian context, the Right to Property and most importantly Shelter could be covered under Articles 14, 21 (Olga Tellis) Article 38, and most importantly as a Constitutional right under Article 300A of the Indian Constitution which delivers the following connotation that no person can be deprived of his property without the authority of law. This means that the rights provided for by this constitutional provision could be only curtailed, abridged, or taken away only by sound and valid law and not by some mere executive fiat in the garb of bonafide duty under the law.

One of the essential tenets of all laws governing demolition is a chance for a reasonable hearing leading to a legally sound, reasoned decision before the act of demolition is executed, and providing a notice period, before demolishing illegal construction. The importance of the proactiveness of government while deciding on demolitions can be observed in the judgment of the MP High Court

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12 International Covenant on Civil And Political Rights (1966), art. 17.

13 Convention on the Rights of the Child (1989), art. 16.

14 UNHCR, <https://www.unhcr.org/> (last visited Dec. 24, 2022).

15 *Conventions and Recommendations*, INTERNATIONAL LABOUR ORGANIZATION, <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.html> (last visited Dec. 26, 2022).

in the case *Arun Bharti & Anr. vs. State of Madhya Pradesh & Ors.* (2017),<sup>16</sup> where the Hon'ble High Court opined that “*The necessity of compliance of the principle of natural justice of Audi alteram partem by affording reasonable opportunity of hearing is inherent in the provisions*”. It concluded that “*Tehsildar is required to conduct the inquiry, which though may be of summary nature but ought to include the all-important elements of affording reasonable opportunity to the affected parties of being heard.*”

Moving on to another very important tenet in the process of demolition i.e. the serving of a proper show cause notice. Most of the victims in the cases of illegal demolition have testified that they were either not served with a demolition notice or the notice was incomprehensible and did not meet the standards of a formal notice prescribed under the law. The effectiveness of a proper show cause notice and its timely service could prevent a lot of cases of illegal demolitions which are unwarranted by law. The idea of the effectiveness of notices in a demolition process has been critically observed by Justice S.B. Sinha of the Supreme Court as his lordship was then in his judgment – “*Had a proper show cause notice been served upon the first respondent, he could have shown that the alleged violation of the provisions of the Act is of negligible character which did not warrant an order of demolition.*”<sup>17</sup>

## **D. WAY FORWARD**

The year 2022 has seen a pro-fundus escalation of pseudo-legal demolitions in major states of India. The tension behind this escalation is not only the rise in the number of demolitions but also the territoriality of the said events. The issue of why the location of the events is of concern is because most of these locations are rural or very remote and hence neither efficient legal help nor immediate access to courts is available to the victims in these areas. This vacuum in the protection mechanism gives a clean chit to the executive branch of the state to flout all the regulations revolving around demolitions. The paper endeavors to identify the probable changes in law and policy that would make the system

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<sup>16</sup> *Arun Bharti v. State of M.P.*, 2020 SCC OnLine MP 3028.

<sup>17</sup> *State of U.P. v. Virendra Kumar*, (2022) 11 SC CK 0066.

more transparent and victim-friendly thereby curbing the number of pseudo-legal demolitions that are on the rise due to corruption and most importantly a state-sanctioned punishment utilized by political powers to suppress the people.

The most probable solution would be to provide access to constitutional courts around the clock to gain effective injunctive or preventive remedies which are very important as a shelter is the ground norm of a family's wellbeing. There should be a delegated establishment that is allowed to pass interim orders prima facie, therefore, reducing the burden of the High Courts under 226 and providing better accessibility in cases like this where time is this essence and delay could lead to irreparable loss.

The second solution would be to provide individual pecuniary and criminal liability to officers involved in pseudo-legal demolitions so that veil of bonafide immunity and state responsibility cannot be used as defenses in such cases.

The Supreme Court in the case of *Municipal Corporation of Greater Bombay v. M/s Sunbeam High Tech Developers Pt. Ltd.*<sup>18</sup> has relied upon the idea that “the action of demolition without following the procedure prescribed by law is illegal.” It further held that “if the Municipal Corporation violates the procedure while demolishing the building but the structure is illegal, some compensation can be awarded and, in all cases where such compensation is awarded the same should invariably be recovered from the officers who have acted in violation of the law.” The court also went on to observe about the due process which is an important element. The Court opined that “notice must be served personally, wherever possible, on the person who has raised any illegal structure, including the owner/ builder/occupier/architect/contractor; additionally, notice can also be sent through email or mobile phone message. The notice must also contain the email address and phone number of the municipal authorities where the notice can send their reply.”

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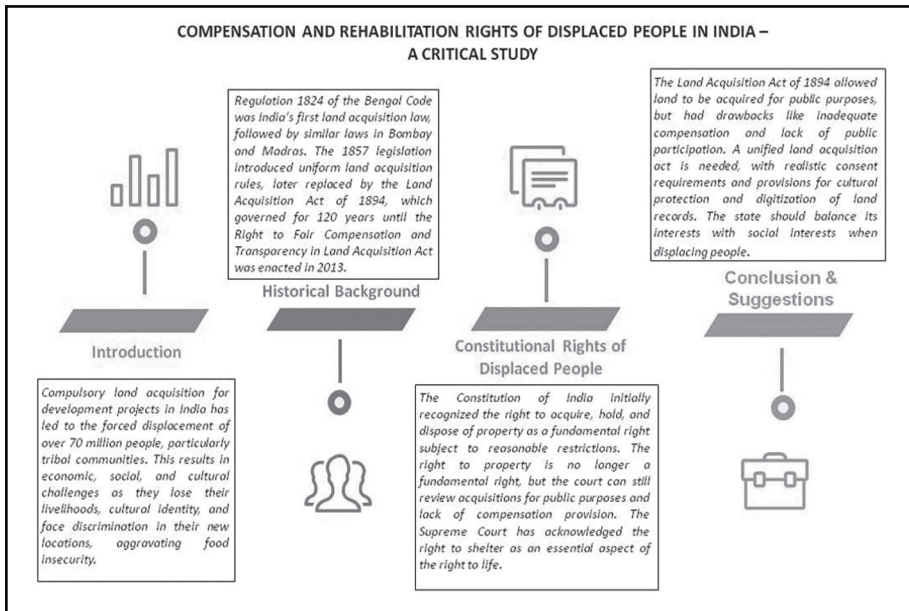
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18 *Municipal Corporation of Greater Mumbai v. M/S Sunbeam High Tech Developers Pvt. Ltd.* AIR 2019 SC 5435.



## COMPENSATION AND REHABILITATION RIGHTS OF DISPLACED PEOPLE IN INDIA – A CRITICAL STUDY

*Arunima Goel\**



### *Abstract*

In the past few decades, India has undertaken various development projects to achieve economic growth and development. However, due to the scarcity of government-owned land, these development projects often entail large-scale land acquisitions and demolitions. Land acquisitions derive validity from the State's power of eminent domain which provides that individuals only have the right of possession to land, and the ultimate right to own land is always with the State and it can deprive an individual of his land for the greater common good. The Land Acquisition Act, of 1894, was one such Act that facilitated the State to take over land under

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its power of eminent domain, upon showing of public purpose and upon payment of compensation. However, the said Act did not have any provision for resettlement and rehabilitation of displaced people and compensation provided under the Act was also inadequate. The researcher through this paper will critically analyze the approach of the judiciary toward the right to property, compensation, rehabilitation, and resettlement of displaced people. The researcher will also critically analyze major drawbacks in the 1894 Act with the help of various case laws and how far the current law i.e. the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, has been able to provide for the shortcomings of the previous law. The researcher will also briefly analyze other laws under which land can be acquired in India and the compensation, rehabilitation, and resettlement of displaced people under those.

**Keywords:** Involuntary Displacement, Compulsory Land Acquisition.

## **Contents**

- A. Introduction
- B. Historical Background
- C. Constitutional Rights of Displaced People
- D. Compensation and Rehabilitation Rights vis-a-vis Land Acquisition Act, 1894
- E. Compensation and Rehabilitation Rights vis-a-vis Land Acquisition Act, 2013
- F. Conclusions & Suggestions

## **A. INTRODUCTION**

In the past few decades, world economies have developed on a massive scale. The increasing pressure on economies to achieve development<sup>1</sup> and economic growth has resulted in these countries undertaking widespread development projects such as the construction of irrigation and hydel dams, setting of mines, infrastructure projects, etc. To accommodate such development, land redevelopment becomes a necessity.<sup>2</sup> Furthermore, land acquisitions derive validity from the state's power of eminent domain.<sup>3</sup>

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1 CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/development> (last visited Apr. 08, 2023).

2 NORBY PAUL, DEVELOPMENT, DISPLACEMENT AND CAPITALS (2016).

3 Chiranjit Lal Choudhary v. Union of India, AIR 1951 SC 41.

Compulsory acquisitions of land result in large-scale forced and involuntary displacement. Millions of people are rendered jobless, homeless, and landless. The Housing and Land Rights Network India, in its report to the United Nations Human Rights Council on *'The Human Rights to Adequate Housing and Land in India,'* has stated that India has the highest number of people displaced from ostensible 'development' projects – over 70 million since its independence (1947).<sup>4</sup>

These people have to face various economic, social, and cultural problems. They lose their productive assets and income sources, cultural identity, traditional authority, and social community.<sup>5</sup> Most of the people displaced are tribal people having distinct cultures and values.<sup>6</sup> Traditional values and culture recognized in these communities dissipate. They become homeless and vulnerable. They are relocated to other established communities where they are often discriminated against and excluded from decision-making processes. The land to which they are relocated is generally of inferior production quality and compensation awarded to them is far from adequate. It also increases the problem of food insecurity as most of the land which is being acquired is agricultural land.

## **B. HISTORICAL BACKGROUND**

Regulation 1824 of the Bengal Code was the first land acquisition law in India. It applied to Calcutta and other parts of Bengal and was enacted to lay down rules for acquiring property for the general convenience of the community and to provide just and full compensation to all the persons holding an interest in that property.<sup>7</sup> Similar legislations were introduced in the presidency towns of Bombay and Madras in the year 1839 and 1852 respectively. In the year 1857, the government enacted uniform land acquisition legislation for the entire

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4 HOUSING AND LAND RIGHTS NETWORK, THE HUMAN RIGHTS TO ADEQUATE HOUSING AND LAND IN INDIA 1, 15 (2016), [https://www.hlrn.org.in/documents/Housing\\_Land\\_Rights\\_UPRII\\_HLRN.pdf](https://www.hlrn.org.in/documents/Housing_Land_Rights_UPRII_HLRN.pdf).

5 Sujit Kumar Mishra, *Displacement - A major Trauma in the Name of Development*, MADHYA PRADESH JOURNAL OF SOCIAL SCIENCES (2002).

6 *Id.*

7 Bengal Resolution I, 1824.

country. This Act provided that the collector will fix the compensation for the acquired land and the arbitrator had the power to decide disputes between parties. In 1870 another Act was implemented to replace the 1857 Act which provided that disputes relating to compensation will be decided by the civil courts to overcome unsatisfactory settlement procedure provided in the 1857 Act. This Act was again replaced in the year 1894 by the Land Acquisition Act, of 1894. This Act regulated land acquisition for almost 120 years until it was finally replaced in 2013 by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act.

## **C. CONSTITUTIONAL RIGHTS OF DISPLACED PEOPLE**

The Constitution of India recognized the right to acquire, hold and dispose of property as one of the fundamental rights in Article 19 (1)(f) subject to Article 19 (5) which provides that reasonable restriction can be imposed in the interest of the general public. This Article has to be read with Article 31 of the Constitution of India. Article 31 (1) provides that a person can be deprived of his property according to the law and Article 31 (2) provides that no property shall be acquired for a public purpose under any law unless the law provides for compensation for the property. Thus, it authorized an outsee to challenge Article 19 (1)(f) if it imposes an unreasonable restriction on his right to hold property and if the acquisition is not for a public purpose, or no provision for compensation has been made.

However, till 1955, the interpretation of Article 31 was unclear. There were two interpretations possible, viz. First, Article 31 clause (1) is a more general provision, and clause (2) as elaborating upon the general provision provided in Clause (1) and providing the requirements of valid law; Second, Article 31 clause (1) deals with cases where a person is deprived of the property without transfer of right or transfer of ownership or possession to the State and Clause (2) deals with compulsory acquisition and it was only in case of compulsory acquisition that the requirements of public purpose and compensation were to be fulfilled. Although, the interpretation *prima facie* appears to be more

reasonable and was also accepted by the Supreme Court<sup>8</sup> till 1955, in 1955 a new clause (2A) was introduced in Article 31 by the Constitution (Fourth Amendment) Act, 1955, which provided that where there is no transfer of ownership and possession of the property it will not be compulsory acquisition even if it deprives the person of his property.

The Constitution (First Amendment) Act 1951 inserted Articles 31A and 31 B in the Constitution of India, 1950. Article 31A provided that no law providing acquisition of any estate by the State would be deemed to be void on the grounds of inconsistency with fundamental rights. Article 31 B further provides that the laws which are placed in Ninth Schedule will be challenged on the ground that it is inconsistent with fundamental rights. These amendments were introduced to protect land reform laws, which are enacted with the public purpose of preventing the concentration of land holding in the hand of a few, from judicial review.

This amendment led to another problem which was that despite Article 31 (2) recognizing compensation for acquisition of the property as a fundamental right, the law that provides for the acquisition of land to prevent concentration of land, the matter of inadequacy of compensation in such cases will be beyond judicial review. Therefore, the Constitution (Fourth Amendment) Act, 1955 amended article 31 (2) to provide that no compensation can be called into question on the ground that compensation provided by law was not adequate. However, in *Vajravelu Mudaliar v. Special Deputy Collector*,<sup>9</sup> the Supreme Court had opined that though the First and Fourth amendment ousts judicial review in case of inadequate compensation, it can still intervene in cases where the compensation provided is illusory because compensation must compensate. This view was reiterated in the case of *Keshavnanda Bharti v. State of Kerala*.<sup>10</sup>

The Constitution (Forty–Fourth Amendment) Act, 1978 abolished Article 19 (1)(f) and Article 31 and instead inserted Article 300 A which provides that “no person shall be deprived of his property save by authority of law.” As a result,

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8 State of West Bengal v. Subodh Gopal Das, AIR 1954 SC 92.

9 Vajravelu Mudaliar v. Special Deputy Collector, AIR 1965 SC 107.

10 Keshavananda Bharti v. State of Kerala, AIR 1973 SC 1461.

the ‘right to property’ is no more a fundamental right and the same is true for the right to mandatory compensation in case of compulsory acquisition.

Now, the Constitution no longer obligates the Government to compensate persons whose land had been acquired as per any law passed by Parliament. Nevertheless, the Supreme Court in the case of *K. T. Plantation Pvt. Ltd. v. State of Karnataka*,<sup>11</sup> has observed that the State can exercise its power of eminent domain only for public purposes and depriving a person of his private property for private interest will be unlawful and unfair. The court can exercise its power of judicial review if the acquisition of property was for private purposes or where there is no provision for compensation. Thus, even though the Constitution no more mandates the requirement of public purpose and compensation the court will still be at liberty to review laws on that basis.

Although the property right is no more a fundamental right, the right has been recognized by the Supreme Court in various judgments<sup>12</sup> in the form of right to shelter. The Supreme Court in *Chameli Singh v. State of U.P.*<sup>13</sup> has observed that:

*“Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care, and shelter. These are basic human rights known to any civilized society... Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually, and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation, and other civic amenities like roads, etc.”*

## **D. COMPENSATION AND REHABILITATION RIGHTS VIS-A-VIS LAND ACQUISITION ACT, 1894**

The Land Acquisition Act, of 1894, empowers the Government to acquire land for public purposes from land owners for a fixed compensation. Whenever the

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11 *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, AIR 2011 SC 3430.

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

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

Government wishes to acquire a private land, the District Collector issues a notification in the newspaper to inform the land owner and public in general, of the Government's intention to acquire such land and thereby prevent them from entering into and dealing with respect to said land.<sup>14</sup> Owners and people having an interest in the land have 30 days from the date of issue of such notice to file their objections if any.<sup>15</sup> If any of the people file an objection to such acquisition the Collector allows him to present his case and after hearing, submits its report to the government with its recommendations. Based on these recommendations the government decides on acquisition. If the government decides to acquire land the District Collector publishes a notification in the newspaper calling land owners and the parties interested to file their compensation claim.<sup>16</sup> On these claims, the Collector conducts an inquiry and accordingly makes an order awarding compensation.<sup>17</sup>

Analyzing, the procedure of acquisition under the 1894 Act, it can be held that the land-owners or the outsees have no right to participate in the decision-making process. All they can do is file objections to such acquisition, but it is the Collector and the Government who have the final say on these objections. The procedure seems to be draconian, considering it deprives the land-owners of their property which may be a household or a source of livelihood for such landowners. Further, the definition of public purpose provided in section 3(f)<sup>18</sup> is not definitive or conclusive. It gives an inclusive definition. In *State of Bombay v. R.S. Nanji*,<sup>19</sup> the Supreme Court has opined that the expression of public purpose is not capable of a precise definition, and whether the purpose is public or not would depend upon the facts and circumstances of each case. Thus, the definition of public purpose provided in the Act is very vague and gives wide discretion to the government to acquire land for a purpose that is only incidentally public.

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14 The Land Acquisition Act, 1894, §4.

15 *Id.* § 5A.

16 *Id.* § 6.

17 *Id.* § 11.

18 *Id.* § 3(f).

19 *State of Bombay v. R.S. Nanji*, AIR 1956 SC 294.

The Act further provides that the compensation should be based on the market value of the land but fails to provide guidelines by such market value that must be assessed. An interest of 12% is payable in case compensation is not paid even after the acquisition of the land and in addition to that, a solatium equal to 30 % of the market value will also be given.

The Act suffered from various inadequacies such as a lack of provision for rehabilitation and resettlement, a very broad and inclusive definition of public purpose, and inadequate compensation being awarded.

## **E. COMPENSATION AND REHABILITATION RIGHTS VIS-A-VIS LAND ACQUISITION ACT, 2013<sup>20</sup>**

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 provides that the land can be acquired by the appropriate government for public purposes either for its use, for PSU, for public-private partnership, or private companies. However, the consent of 80 percent of such affected people is required for private projects and 70 percent of such people is required for Public-Private partnerships.<sup>21</sup> The Act has provided an exhaustive definition of the term ‘public purpose’ in Section 3(za) so that the land is acquired only for the purposes which are vital for the State and which are in the public interest and to do away with the wide and inclusive definition of term public purpose provided in the 1894 Act, which enabled the State to acquire land even for purposes which are incidental to public purpose.

The Act further mandates consultation with the Panchayat, the Municipality of the Affected Area, and Social Impact Assessment (hereinafter referred to as SIA). SIA is the assessment of the proposed public purpose, affected families, feasibility of acquisition of land, and assessment of other alternatives. The assessment aims at ensuring that the cost of social impact does not exceed the potential benefits of the projects. The Act, however, provides that the said

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20 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

21 *Id.* § 2.

Social Impact Assessment will not be mandatory where the land is acquired for private companies, where environmental impact assessment is carried out concerning any irrigation project, and also where land is acquired by way of appropriate government under section 40 i.e., land acquired in cases of urgency. This social impact assessment must be completed within a period of 6 months from the date of its commencement.<sup>22</sup> This report has to be appraised by an independent expert group.<sup>23</sup> If the expert group thinks that no public purpose will be served by the project or the social impact costs outweighs potential benefits can recommend that the project should be abandoned forthwith. However, the Act further provides that the appropriate government can still proceed with the acquisition of land for reasons to be recorded in writing. The Act doesn't provide for any mechanism to challenge this government action or to challenge the sufficiency of reasons recorded by the government.

Further, when a land is acquired for any public purpose a notice under section 11 of the Act will be issued stating the public purpose involved and reasons necessitating acquisition. This notice can be issued only after SIA and appraisal of acquisition by an Expert Group under section 7 is completed. However, if such notice is not issued within a period of 12 months, a fresh social impact assessment will be conducted.<sup>24</sup> Section 15 of the Act enables a person interested in land covered under the notification issued under section 11 to object to such acquisition within a period of 60 days from the date of publication in writing to the Collector, who shall make his recommendations on such objections to the appropriate government. The Appropriate government, however, will not be bound by such recommendations and can take a decision independent of the said recommendations. The decision of the Appropriate government shall be final. Section 19 of the Act provides that if the appropriate government is satisfied that the land is required for public purpose then it will make a declaration for acquisition. However, the said declaration should be accompanied by a draft rehabilitation and resettlement scheme and can be made only after the concerned body has deposited the cost of the acquisition

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<sup>22</sup> *Id.* § 4.

<sup>23</sup> *Id.* § 7.

<sup>24</sup> *Id.* § 14.



of land in full or in part. The declaration should be made within 12 months of the date of notification under section 11. The land will then be marked and a public notice will be issued to enable the persons interested to make their claims to the Collector. The Collector will then inquire into such claims and will pass an award as to compensation, rehabilitation, and resettlement. The award has to be made within a period of 12 months (can be extended by 12 months if circumstances exist) from the publication under section 19 after which the entire proceedings will lapse. The period for making an award in the 2013 Act has been reduced significantly as the 1894 Act provided a period of 2 years for making an award. The Collector will have the power to take possession of the land only after compensation and monetary rehabilitation and resettlement entitlements are tendered in full to the persons entitled.<sup>25</sup>

The Act provides mandatory publication at every step of acquisition to ensure that all affected persons are well informed of such acquisitions and their interests are taken care of. The Act further mandates publication not only in the Official Gazette but also in local newspapers and on websites.

The Act which though has been implemented with the view of providing a unified legislation for the acquisition of land and rehabilitation and resettlement ousts development projects carried under various special Acts from its ambit such as The Land Acquisition (Mines) Act, 1885, The Metro Railways (Construction of Works) Act, 1978, The National Highways Act, 1956, The Railways Act, 1989.<sup>26</sup> The Act further provides the return of unutilized land to the original owners or Land Banks after the expiry of a period of 5 years from the date of taking over of the possession.<sup>27</sup> The Act though in Section 104 provides that the appropriate government will have an option to take land for lease instead of acquisition, it fails to list circumstances in which it will be compulsory or mandatory for the appropriate government to take land on lease instead of acquisition. The Act further makes provision for the appropriate government to use acquired land for any other public purpose if the land is rendered unusable

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<sup>25</sup> *Id.* § 38.

<sup>26</sup> *Id.* § 105.

<sup>27</sup> *Id.* § 101.

due to fundamental change. This clause unlike the 1894 Act makes it difficult for government to use the acquired land for any other purpose.

**REHABILITATION & RESETTLEMENT** – The Act for the said purpose provides a wide and inclusive definition of the term affected families to include not only a family whose land is acquired but also those whose primary source of livelihood stands affected by the acquisition of the land. Section 16 of the Act provides that after publicizing preliminary notification under section 11 of the LARR Act, the administrator shall, after conducting a public hearing, prepare a draft rehabilitation and resettlement scheme that shall provide for land owners and those whose livelihood is affected by such land acquisition. It shall also make provision for public amenities and infrastructural facilities and resources which shall be provided in the resettlement Area.

**COMPENSATION** – One of the major criticisms of the 1894 Act was the inadequate compensation provided to the people displaced. The Act provided for calculating compensation on the market value of the land. However, often it has been observed that the value of land is underquoted in the land records. Therefore, the 2013 Act provided that the compensation will be *“four times the market value of land in rural areas and two times the market value in urban areas and a solatium up to 100 percent has been provided in the Act”*.<sup>28</sup> *The Act in Section 28 provided various parameters which will be taken into consideration by the Collector to determine the quantum of award.*<sup>29</sup> *Section 30 of the Act provides that the “Collector shall pay an interest at the rate of 12% p.a. on market value for the period from the publication of notification of the SIA study till the date of award of the Collector or the date of taking possession of land, whichever is earlier.”* The Collector will have to pay additional compensation for second or successive displacement. The Act provides that any person who is dissatisfied with the award can appeal directly to the High Court within a period of 60 days of passing of the award.

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<sup>28</sup> *Id.* § 27.

<sup>29</sup> *Id.* § 26.

## **F. CONCLUSION & SUGGESTIONS**

Ownership of land, although an important part of the identity of an individual, can, however, be taken by the State under its power of eminent domain. To regulate this power, the very first law that was introduced was Bengal Resolution I of 1824. Later, the Land Acquisition Act, 1894 was passed which was a central legislation providing for uniform land acquisition laws for the entire country. This Act provided that the land can be acquired only for public purposes and compensation must be awarded to the displaced. Major drawbacks of this law were the restricted definition of persons entitled to compensation,<sup>30</sup> inadequate compensation,<sup>31</sup> inclusive definition of public purpose,<sup>32</sup> no provision for public participation in decision-making, and unregulated urgency clause.<sup>33</sup>

With the adoption of the Constitution, the right to hold, acquire, and dispose of property was recognized as a fundamental right which ensured that the State cannot impose unreasonable restrictions on this right. Article 30 further recognized the right to compensation as a fundamental right. Both these laws were abolished by the Constitution (Forty-Fourth Amendment) Act, 1978. The property right is merely a constitutional right under Article 300A and the right to compensation is no longer a fundamental right. However, the Supreme Court in a catena of judgments has recognized that compulsory acquisition can only be for public purpose and after making provision for compensation.

Therefore by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 the Government of India has been able to address most of the issues related to displacement and has curbed indiscriminate land acquisition. But this is only in the statute book, its implementation will have to be monitored in coming years. Moreover, there are other acts under which land can be acquired like the Metro Railways (Construction of Works) Act, 1978 where compensation is still inadequate. The

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30 The Land Acquisition Act, 1894, § 2(g).

31 *Id.* § 23.

32 *Id.* § 2(f).

33 *Id.* § 13.

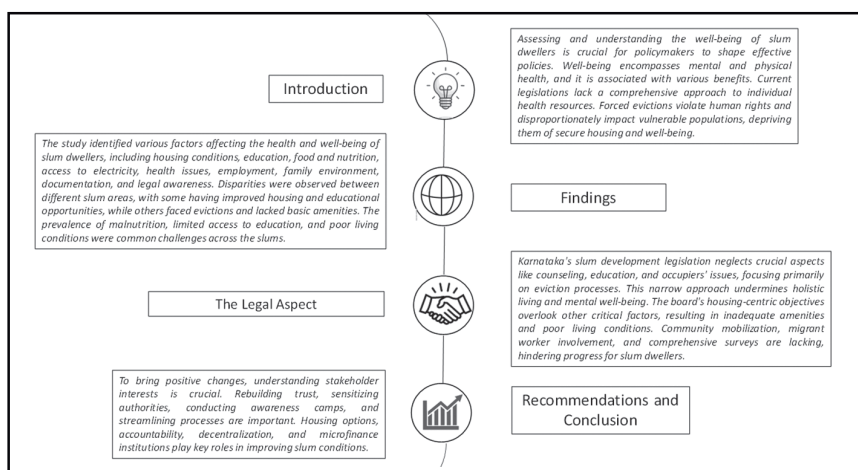
Government of India should try and bring one land acquisition act for all land acquisition. The consent requirement of 80 percent of the affected population in the case of private projects and 70 percent in cases of public-private partnership should be made more realistic. The new legislation increases compensation significantly, but it does not clearly show how it will deal with the problem of delay in the payment of compensation. It fails to make provisions for the protection of the culture and heritage of indigenous people, corporate social responsibility, and digitization of land records. Lastly, the right to property though not a fundamental right is nevertheless fundamental for human existence and should not be casually interfered with. The State should try and balance its interests with social interest and only if social interest outweighs individual interest, it should displace people.

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## IMPACT ON HEALTH AND MENTAL WELL-BEING OF FAMILIES AFFECTED BY FORCED EVICTION

Nikhita S.\* & Kritika\*\*



### Abstract

The article focuses on the impact on the mental health and well-being of families affected by forced eviction in the slums of Bangalore's Urban district. The authors have employed the empirical methodology for primary data collection. Additionally, the doctrinal methodology has been employed for secondary research and review of existing literature, policies, and government circulars/notification.

The authors focus specifically on the impact of evictions on families contrasting the same with families living in slums which have been developed to a large extent. A discussion on the life, education, health, and various other struggles of people evicted from their

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homes forms the core of the article. The article also draws similarities and differences in the lives of teenagers and children in particular living in different slums where evictions had taken place and otherwise. It looks into the laws governing the slums in Bangalore and an analysis of the legal lacunae pertaining to the health and mental well-being of the slum dwellers has also been made. Thus, the authors attempt to bring the notion of health and mental well-being of slum dwellers within the existing legal framework by analyzing the same concerning various parameters that have been enlisted further, while also proposing policy-level recommendations to tackle the issues faced by the families who have been forcefully evicted from their homes and need immediate assistance from the government as they are majorly dependent on certain Self- Help Groups, Trade Unions and NGOs, thereby not being able to identify themselves as belonging to a place legally or emotionally.

**Keywords:** Health, Mental Well-Being, Forced Eviction, Families.

## **Contents**

- A. Introduction
- B. Findings of Study
- C. Legal Aspect
- D. Recommendations & Way Forward

## **A. INTRODUCTION**

“Home is a shelter from storms – all sorts of storms.”

*– William J. Bennett*

The CDC (Centers for Disease Control and Prevention) gives an insight into the concept of well-being as an integration of both mental health as well as physical health. It is a measure beyond several social, political, and economic factors that give us a perception of the lives of people. It is an outcome that is meaningful to the public. Assessing and understanding the well-being of slum dwellers is extremely important because this can help the policymakers shape new policies in comparison with the existing ones aiming to see its impact on the stakeholders. Well-being is associated with numerous health, job, family, and economically-related benefits.<sup>1</sup>

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<sup>1</sup> *Well-Being Concepts*, CENTRE FOR DISEASE CONTROL AND PROTECTION, <https://www.cdc.gov/hrqol/wellbeing.htm> (last visited Jan. 02, 2023).

Health is not concerned merely with the treatment of diseases, it is considered a resource that ensures that the aspirations, needs, and the environment enables them to live a fruitful life, which develops the fundamentals of well-being. The legislations concerned with the Slums in Bangalore look at health as an overall response but do not look at the individual resources of health which include physical activity, healthful diet, social ties, resiliency, positive emotions, and autonomy.<sup>2</sup> The World Health Organisation defines well-being as “Well-being is a positive state experienced by individuals and societies. Similar to health, it is a resource for daily life and is determined by social, economic, and environmental conditions. Well-being encompasses quality of life and the ability of people and societies to contribute to the world with a sense of meaning and purpose”.<sup>3</sup>

In the UK, well-being is measured by looking at areas such as health, relationship, education, skills, finances, place of residence, occupation, and the environment they reside in.<sup>4</sup> The Canadian Index of Well-being includes democratic participation, vital communities, an educated population, balanced time use, and participation in leisure and cultural activities as parameters to measure well-being.<sup>5</sup> The Gallup Scientists have enlisted 5 parameters of well-being which in turn affect the health and mental well-being of people. They are as follows:

- Career Well-Being - to be able to do work that one likes and is happy doing the same.
- Social Well-Being - is about having strong relationships and love in life
- Financial well-being - is about having financial autonomy and managing the economic life
- Physical Well - Being is about having good health and the energy to do things daily.

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2 *Id.*

3 *Health Promotion Glossary of Terms 2021*, WORLD HEALTH ORGANIZATION (Dec. 06, 2021), <https://www.who.int/publications/i/item/9789240038349>.

4 *Well Being*, OFFICE FOR NATIONAL STATISTICS, <https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing> (last visited Jan. 02, 2023).

5 *What is Well Being?*, CANADIAN INDEX OF WELL-BEING, <https://uwaterloo.ca/canadian-index-wellbeing/what-wellbeing> (last visited Jan. 02, 2023).



- Community Well-Being is about having a sense of engagement and togetherness with the community one lives in.

Principle 6 of the Guiding Principles on Internal Displacement states that<sup>6</sup>:

*“Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.” Further, the Indian National Campaign on Housing Rights argues for “The right for every woman, man, and child to a secure place to live in peace and dignity”.*<sup>7, 8</sup>

Forced evictions are defined by the United Nations as the temporary or permanent removal of individuals, families, or communities from their homes without their will or from the land they occupy without any legal protection or an appropriate form to do the same.<sup>9</sup>

The areas visited by the authors during the study in Bangalore Urban District have been subjected to such evictions; however, certain differences are present concerning the role of the government as well as private owners of the land. When these evictions occur- civil, political, social, and cultural rights are violated in huge numbers since there is no legal justification for the same or legal protection guaranteed to those living in such conditions. Sometimes these occur in urban areas under the guise of beautification and renewal, or to ensure mega-events are conducted in the name of public interest, and so on, therefore, majorly affecting the poor and those deprived of secure tenure. The United Nations Draft further states that, for such evictions, the basic principles that are to be met to comply with the standards accepted internationally are as follows:

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6 Guiding Principles on Internal Displacement, 6, E/CN.4/1998/53/Add.2.

7 MILOON KOTHARI, ET AL., THE HUMAN RIGHT TO ADEQUATE HOUSING AND LAND (2006), <https://nhrc.nic.in/sites/default/files/Housing.pdf>.

8 *What Does the ‘Human Right to Adequate Housing’ Mean?*, [https://www.hlrn.org.in/documents/Human\\_Right\\_to\\_Adequate\\_Housing.htm#:~:text=The%20UN%20Special%20Rapporteur%20on%20adequate%20housing%20defined%20the%20human, live%20in%20peace%20and%20dignity.%22](https://www.hlrn.org.in/documents/Human_Right_to_Adequate_Housing.htm#:~:text=The%20UN%20Special%20Rapporteur%20on%20adequate%20housing%20defined%20the%20human, live%20in%20peace%20and%20dignity.%22) (last visited Jan. 02, 2023).

9 *Research and Right to Development Division*, OHCHR REPORT (2011), [https://www2.ohchr.org/english/ohchrreport2011/web\\_version/ohchr\\_report2011\\_web/allegati/27\\_Research\\_and\\_Right\\_to\\_Development.pdf](https://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/27_Research_and_Right_to_Development.pdf).

- Firstly, before such evictions the consultation as well as participation of the affected communities must be granted. If the above is taken into consideration, the eviction will not be considered as a forced eviction.
- Secondly, adequate notice must be given to comply with the same.
- Thirdly, there must be compensation through effective administrative and legal resources.
- Fourthly, any actions which eventually result in homelessness must be prohibited.
- Fifth, if there are provisions that lead to the decoration of housing as well as living conditions, such actions must be prohibited.
- Lastly, there must be provisions for adequate relocation and compensation before such evictions are to be carried out.

Therefore, the above conditions must be met, to prove that evictions are not under the category of forced evictions. The most common problem faced by the families who have been forcefully evicted is resonating with the idea of home. Many of the slum inhabitants that the authors interviewed believed that where they are currently staying cannot be called home but home is the state or village they have come from. Despite living in Bangalore for the last 15 to 20 years, the idea of a home with these sheet-made roofs does not instill in them any comfort. The sense of rootedness and belongingness is absent. They consider themselves as temporary dwellers and sooner or later will have to shift again with their entire community.

## **B. FINDINGS**

The slums have been established on the banks of the drainage/sewer canals in all the areas visited. The various parameters affecting the health and mental well-being of the slum dwellers identified during the study include the houses they live in and the facilities within, their education, the food, water, and nutrition they consume, the electricity availed, an overview of their health and the diseases prominent, their employment roles, family environment, documents, privacy, and personal space being another important factor concerning mental well-being, recreation, cases filed against them, financial autonomy concerning

teenagers, children, and women, the safety of children and teenagers, role of self-help groups, the prevalence of unions and other legal awareness.

The houses in Patrapalya are developed to a great extent due to the involvement of the government and the Slum Development Board who very proudly boast of the success of the PM- AWAS Yojana wherein the pakka houses are constructed with 1 bedroom, 1 kitchen, and an Indian Style Washroom in each residence. They are no longer called slums but quarters. These quarters have buildings with 4 stories with staircases within to reach the floors above. It has been observed that there has been constant work undertaken by the government in these areas as there was concrete work going on on the topmost floor due to damages caused by the rain. There was also a temple, a community hall, a chapel, and a park established.

In the case of *Jain v. State of Karnataka*,<sup>10</sup> it was held that the right to education is a fundamental right guaranteed under Article 21 of the Constitution. However, this fundamental right is a far-fetched reality when it comes to the children and residents of Kundanahalli. The majority of the teenagers in all the slums, whether undergone forced evictions or not, were seen dropping out of schools and engaged in some or other work. In Patrapalya, it was observed that the area had a better-defined system of education wherein anganwadis were running, the government schools, private schools, PU Colleges, and degree colleges were at a short distance from the House Blocks and many were aspiring for higher education.

The Supreme Court explicitly established a constitutional human right to food.<sup>11</sup> One is entitled to Adequate Housing with a focus on continuous improvement in living conditions and remaining free from hunger. The State must take measures to ensure that these entitlements are not violated.<sup>12</sup> Children being the most vulnerable are protected by various international conventions which prescribe that they must be provided with adequate nutrition.<sup>13</sup>

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10 *Jain v. State of Karnataka*, (1992) 3 SCC 666.

11 *People's Union for Civil Liberties v. UOI*, W.P. (Civil) No. 196/2001 (SC).

12 *The International Covenant on Economic, Social and Cultural Rights*, 1966, art. 11.

13 *The Convention on the Rights of the Child*, 1989, art. 27.

The Kundanahalli slum dwellers struggle for 3 meals a day. However, in Paatrapalya, there are issues concerning expenses related to food. The PDS (Public Distribution System) isn't welcomed, as the rice given is of poor quality and nothing other than that is provided for free or at subsidized prices, which in turn causes a lot of financial crunch but they still manage to feed their children well. They are healthy looking and have 3 meals a day. The children routinely consume milk, eggs, and non-vegetarian food rich in fats and protein. There is access to clean bore-well water but the children in the Kundanahalli slums look malnourished and weak. Their norm is 2 meals a day. The food the children and teenagers consume daily is rice and dal. Non-vegetarian food and fish, which is their cultural food, are consumed occasionally. Drinking water is through water cans/bottles which are purchased, there are no other sources of regular drinking water.

Several High Courts have adjudicated previously and set precedents as to the right to electricity being a legal right and that denial of power supply is a violation of human rights. The governments have also explicitly highlighted the significance of electricity by bringing in policies namely the National Electricity Policy which aimed at providing electricity to all households and accessibility by 2012.<sup>14</sup>

It was observed in Patrapalya that not all interviewers were suffering from any illnesses, there was not a similar pattern. There has been rampant intake of *Ganja* and other drugs among teenagers but it has drastically reduced ever since the slum has been developed. Constant interventions through government programs and community mobilization have led to a decrease in such criminal activities. Women and adolescent girls know about menstrual hygiene and even use menstrual products like sanitary napkins. They are however unaware of PCOD/PCOS. In the L.R.Nagar slums, children fall severely ill constantly with fever every time the sewer water floods their households. The same issue is seen even in the Kundanahalli slums where constant flooding takes place due to the Bangalore Rains. Cold, Fever, Typhoid, and Malaria are common occurrences.

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<sup>14</sup> Ministry of Power, National Electricity Policy (2005), <https://powermin.gov.in/en/content/national-electricity-policy> (last accessed Jan. 02, 2023).

Employment trends were seen in Paatrpalaya wherein some were construction workers, A few of them were Lawyers, some Businesspersons who had a Tailoring shop, or were local market sellers or were running a bakery. Initially, since all houses were on the ground floor, almost all of them used to have a home-run shop and there was sale of food items like *pakoras*. This changed due to the storied buildings now which further cuts the household income. In Kundanahalli, since there was no stability concerning the education of children and there is nothing else to do during the day hours, many children start working at a very young age, about 15 years in most cases. The family environment always influences adolescent psychology and enables problem-solving strategies as well as self-confidence among individuals. It gives them the ability to set goals which results in the healthy functioning of these interaction patterns and provides a healthy environment to grow in which further enhances the mental well-being of children.<sup>15</sup>

However, in Kundanahalli, the fathers are mostly employed as rag-pickers for the BBMP with no permanent status and are paid extremely low salaries around Rs. 6,000 per month. Almost 1/2 of the salaries are sent back to the native where their parents reside. Therefore, they spend the majority of their time trying to earn for the family, thus leading to little time spent with children who in turn lose out on family time. There are no discussions about schools or the future, as much as they would love to have conversations on the same. The nature of uncertainty of their current situation bars them. There is alcohol consumption among the men, which is a result of the nature of their work. However, as a community, there is togetherness and a sense of belonging towards each other wherein they spend quality time. The children have friends with whom they spend their daytime.

Legal documentation forms the crux of the issues concerning evictions. Those suffering from forced evictions have constantly raised concerns concerning documentation. In Kundanahalli, these evictions are rampant and another

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15 Sushil Kumar Maheshwari, et al., *Impact of Family Environment on Mental Well-being of Adolescent Girls: A Cross-sectional Survey*, 17(1) INDIAN JOURNAL OF PSYCHIATRIC NURSING 24 (2020).

eviction awaits against the will of the dwellers in the months ahead, as they have already been notified by the private owners to empty the spaces within the given period. There is a stark absence of rent agreements for the lands occupied by the dwellers. They pay an advance or a collective rent of Rs. 6 to 8 lakhs for the spaces they live in, to the private owners. They apprehend that these evictions are forced by the private owners under the pressure and influence of the governments who in a disguised form, ask the private owners to vacate these lands. Therefore, though the government excuses itself from taking up responsibility for the same, the dwellers believe that there is involvement of the government when these evictions happen, who defend themselves by stating that they have no control over private lands and what the private owners dictate.

### **C. THE LEGAL ASPECT**

It is very unfortunate to note that neither the Act nor the rules, nor the schemes initiated by the slum development board in Karnataka address anything with regards to counseling, education for children, support to adolescents, family environment, or other factors that ensure a healthy living or the mental well-being of the dwellers. It vividly discusses the processes of evictions and the role of the government in the same but it fails to highlight and acknowledge the other aspects of a holistic and quality living. Addressing just one aspect of life will render the entire idea of growth and development futile. It is pertinent to question the slum clearances, as prescribed under the Act are to whose benefit and development - The slum or the city? The approach of the legislation in using words concerning slums being inhabitable is harsh. It lays an idea of non-acceptance and ignorance of the lawmakers to the real issues of the slum dwellers.

The Act defines an occupier and an owner but fails to address the issues that the occupiers face at the hands of the owners such as irregular stay, lack of rent agreements, no address proofs, lump sum advances, and rents paid.

An occupier<sup>16</sup> is inclusive of any person who for the time being is paying or

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16 The Karnataka Slum Development Act, 1974, § 2(h)(ii).

is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable while an owner,<sup>17</sup> includes any person, who is receiving or is entitled to receive the rent of any land or building, whether on his account.

The prescribed authorities are obligated to clear a slum declared under the clearance area by the report submitted as per the Act.<sup>18</sup> However, apart from such obligations, there is no other responsibility the government is assigned which focuses on the mental well-being and health of the families affected by forced evictions. Further, the Slum Development Board under its objectives highlights that the board is aimed at making Karnataka a slum-free state under the Centrally sponsored Pradhan Mantri Awas Yojana (Housing for all) scheme.<sup>19</sup>

Therefore, there is no scope for any other factors as the board is currently focusing on providing housing, which is also biased and largely influenced by vote banks in certain areas and the political will of the slum dwellers. It also aims to enable the slum dwellers to live in hygienic conditions by providing basic amenities, such as drinking water, street lights, roads, drains, community bathroom, stormwater drains, and community hall wherever possible, however, the actions of the Board still focus on housing as all the slums visited face a serious water crisis and inefficient roads to commute. The drains are not maintained which causes a flood during rains. The board also aims at conducting socio-economic surveys but hardly suggests what must be done out of it. The Kundanahalli slum dwellers have approached the government several times with their poor socio-economic conditions but there are no provisions to improve the same. There have been no community mobilization programs or involvement of migrant workers in the programs conducted. They have been neglected for they lack rental agreements, no political power or representation, no benefits by the government to address this community of Bangalore, and

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<sup>17</sup> *Id.* § 2(i).

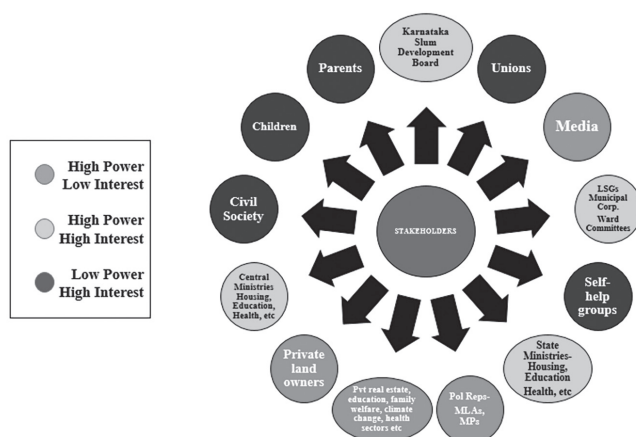
<sup>18</sup> *Id.* § 12.

<sup>19</sup> *Board Objectives & Functions*, KARNATAKA SLUM DEVELOPMENT BOARD, <https://ksdb.karnataka.gov.in/info-1/Board+Objectives++-+Functions/en> (last visited Jan. 02, 2023).

neither have there been any attempts made by the Board to address such rampant evictions by private owners. No surveys have been conducted, to report the living conditions of these slum dwellers, or to understand the educational or nutritional needs of the children which focus on the health and mental well-being of these children and families.

## D. RECOMMENDATIONS & WAY FORWARD

Before implementing any changes, it is important to understand the power and interest of different stakeholders. At the outset, there is a need for rebuilding trust since a vast majority of the slum-dwellers have no/ lost confidence and hope in the Board. Further, there is a need for sensitization for government authorities on concerns and issues faced by Slum dwellers. When any slum-dweller approaches



the authorities, the approach must be empathetic and nuanced to their living conditions. It is also relevant to note that many slum-dwellers are completely unaware of the benefits available to them. Thus, awareness

camp on the Board and its objectives and activities, the laws, legal aid, and other schemes for the Slum dwellers ought to be conducted for which involvement of civil society would also be useful. To address more practical issues, a uniform portal for the registration of slum dwellers and declaration of slums can be created. This would facilitate streamlining activities of the Board including conducting camps to assist Slum- dwellers in procuring documents and benefits under schemes- Ration Card, BBPL, etc. for which partnerships and associations with Legal Aid Cells of Law Colleges can be explored. Skill development programs in various disciplines for adolescent girls and domestic helpers., counseling, and routine health camps must be provided, and



mandatory appointment of duly qualified Counsellors and Health workers in Government schools is necessary. As far as the issue of Housing is concerned, the following options can be considered:

- Develop a mechanism for acquisition of the private land on which Slum-dwellers are residing and then undertaking pucca house construction or
- Relocation of families to the pre-built government housing units or
- Provide subsidized rent-based accommodation for Slum-dwellers with rent payable until the unit cost is covered.

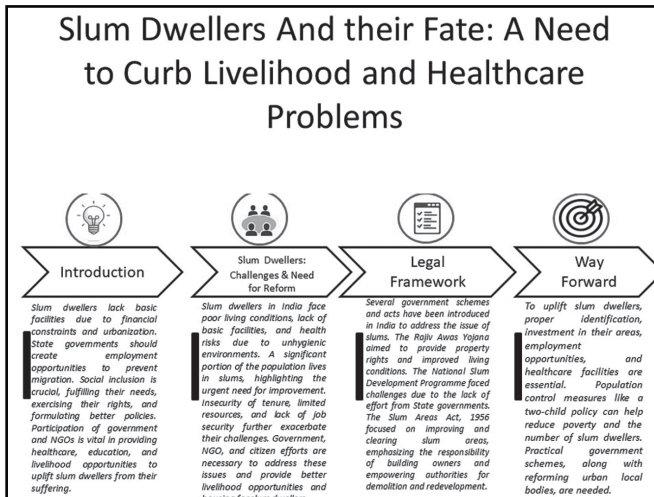
Further, speedy document verification by the Slum Development Board is another area that deserves attention. Slum Upgradation activities must also be looked into rather than just arbitrary clearances. On the whole, accountability for the work done by the Board on a yearly basis is imperative to ensure upliftment. There is a grave need to rethink Beneficiary contribution (Min. 1.5 lakhs) in the PMAY scheme. This was an issue noted by the KSDB as well as it has been noticed that most slum-dwellers do not possess the financial strength to make such a contribution.

Lastly, on the political side, decentralization and involvement of the local self-government, with each Ward Committee having a representative (adult and child) from the slums would give more voice to the concerns of the slum-dwellers and bring them to the fold of decision-making. The invisibility of slum-dwellers in Budgets is shocking and giving representation at local levels would help address the same. Thus, the need to develop microfinance institutions to avoid high rates of interest on loans., encourage small-scale industries within Housing complexes, and organization into Self- Help Groups are also crucial to the cause.

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## SLUM DWELLERS AND THEIR FATE: A NEED TO CURB LIVELIHOOD AND HEALTHCARE PROBLEMS

Ashish Pathak\* & Gauri Kaushik\*\*



### Abstract

India is a country of more than 1.3 billion people, which is 17.5 percent of the world's population and covers only 2.4 percent of the world's area. Its population comprises people coming from different sections of society and slum dwellers are one of them. They are the people who are economically weak and live in unhygienic and poor living conditions. There are no proper sanitation services and most of them face the risk of falling ill due to the lack of basic health facilities. The Constitution of India, in the form of Article 21, gives the Right to life which includes a 'meaningful life' to every person, but the lackluster approach of the government and its authorities creates problems for the slum dwellers who migrate from their villages/homes to cities for livelihood purposes. The

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researchers in the first part of the article have tried to focus on the problems, (especially related to poverty) these people face in India and the circumstances making them prone to them. In the second part, an attempt has been made to propose viable solutions for their upliftment by chalking out practical and implementable policies of the government, NGOs, etc. concerning their livelihood and living conditions. To be specific, the authors have focused on the steps paving the way for the inclusion of slum dwellers in society and this has been made possible only by explaining the problems they face and how they can be solved. The researchers have tried to analyze the write-ups of various authors who have reflected their views profoundly in the form of articles, books, and debates. The research methodology adopted is doctrinal including the principles of applied research. The primary objective of the study is to analyze the impact of poverty alleviation schemes and statutes which have been made for the welfare of slum dwellers and to suggest viable solutions for the upliftment of slum dwellers and their social scenario.

**Keywords:** India, Constitution, Slum, Life, Livelihood, Social Scenario.

## **Contents**

- A. Introduction
- B. Slumdwellers: Challenges and Need to Overcome Them
- C. Schemes and Laws – What did they achieve
- D. Way Forward
- E. Conclusion

## **A. INTRODUCTION**

Slum dwellers are the class of people who are devoid of basic facilities like quality health, food, etc., and are forced to live in conditions that are not suitable for any human being. Their condition is due to the lack of financial resources, and increased population. Rapid industrialization may be beneficial for the economy, but it also plays a role in increasing the number of migrants and slum dwellers. In India, cities like Mumbai, Delhi, Ludhiana, etc. attract people for employment opportunities who reach there for earning their livelihood, most of them from Bihar, Odisha, Uttar Pradesh, Andhra Pradesh, and Jharkhand, and these States

had seen a spike in the number of COVID cases back in 2020 as the migrants had returned to these States.<sup>1</sup> The question that arises here is what was the need for these people to leave their native places? The answer is livelihood. It would not be wrong to say that migration and slums have a connection. If the State governments had been successful in creating employment opportunities in their territories, there won't be any problem for these people who had migrated from one place to another. They could have easily availed the chances created by their governments, instead of reaching other places.

The section of the society living in slum areas deserves to be a part of the mainstream society where they have the right to put their views properly, frankly, and without any kind of pressure. This can be made possible only after fulfilling their basic needs like providing good food, proper health care facilities, and housing. It is important to note that the slum dwellers are also citizens of India and have the right to exercise their Fundamental Rights.<sup>2</sup> Article 21 of the Indian Constitution talks about the Right to Life and Personal Liberty and is available to every 'person'. It doesn't talk about mere existence but existence with a decent and respectable standard of living. The impact of social inclusion of slum dwellers will be beneficial for the government as well as the nation as they will bring in different ideas through their demands. Their need will help the government in formulating better policies for their growth and after coming into the mainstream; their efforts will surely boost the Indian economy. It is not easy to finish slums in India but it is possible to bring them out of their suffering and it can be done easily by implementing potent solutions or measures. The approach of the government as well as the common citizens who are part of NGOs, in this process, should be participatory i.e. every section of the society should try to participate in formulating and taking measures like providing sufficient healthcare and educational opportunities, means of livelihood, etc. to the people living in slums.

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1 Bedanti Saran, et al., *Bihar, Jharkhand, and Odisha Record Big Spikes as Migrant Workers Return Home*, THE HINDUSTAN TIMES (May 23, 2020), <https://www.hindustantimes.com/india-news/bihar-jharkhand-and-odisha-record-big-spikes-as-migrant-workers-return-home/story-6PfyWmDaJPbpkgeZpqTVhN.html>.

2 INDIA CONST. art. 12-35.

## **B. SLUM DWELLERS: CHALLENGES AND THE NEED TO OVERCOME THEM**

The financial condition of slum dwellers makes them prone to diseases and infections as the place where they live is unhygienic, unsafe, and devoid of basic facilities like clean water, ventilated rooms, etc. *Kiran Pandey and Lalit Maurya* in their article titled “*Slumming it out*” have done a comparative study of the States of India having a population of slum dwellers and brought forward the problems they face daily. Their research shows that 36.1 percent of Andhra Pradesh’s population lives in slums and Maharashtra has 61 percent of slum households without drainage connections.<sup>3</sup> As per their observation, 65 percent of India’s towns have slums and every sixth person in urban India lives in slums that are not fit for human beings.<sup>4</sup> This data is horrific as India is the second most populous country in the world and the number of slum dwellers is quite large. Problems faced by these people include dirty washrooms, cramped houses, pathetic schools, garbage and pith near them, etc.<sup>5</sup> Due to rampant corruption in government departments and unorganized setups, these people have no option but to keep living in deplorable conditions that are not fit to be lived. They start considering it as their fate and tend to compromise with the circumstances. An article titled ‘Slum Dwellers and their Right to the City’ has brought forward the reason for exacerbated demographic divide in the development of slums in India.<sup>6</sup> The Economic Survey conducted by the Government of India in 2017 reflected the fact that about 60 million people had migrated from UP and Bihar to urbanized and industrial areas.<sup>7</sup>

*Vishal Sethi* in his article titled “*Life in a Slum: Ugly Face of India*” has advocated for combined efforts of the government, NGOs, and citizens for improving the condition of slum dwellers. E.g. the governments after identifying the slums

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3 *Slumming it Out*, DOWN TO EARTH, <https://www.downtoearth.org.in/dte-infographics/slums/index.html> (last visited Dec. 22, 2022).

4 *Id.*

5 Vishal Sethi, *Life in a Slum: Ugly Face of India*, THE TIMES OF INDIA (Aug. 17, 2016), <https://timesofindia.indiatimes.com/blogs/keep-india-beautiful/life-in-a-slum-ugly-face-of-india/>.

6 Shiva Satish Sharda, *Slum-dwellers, and their Right to the City*, INDIAN EXPRESS (Aug. 10, 2022), <https://indianexpress.com/article/cities/chandigarh/slum-dwellers-and-their-right-to-the-city-8080946/>.

7 *Id.*

and the people living there can ask volunteers to come and help them in getting employment as per their ability. Harshita Gupta and Krishangee Parikh in their article titled “*Beyond the right of mere existence: From the lens of slum dwellers*” have focused on the 2018 report of the World Bank citing that 35 percent of the urban population of India has been living in slums.<sup>8</sup> Their analysis of *Samar Pal v. Union of India*<sup>9</sup> depicting the pathetic condition of slum dwellers and the connection between the right to life and right to livelihood has reflected the fact that movement of slums from one place to another is detrimental to their source of income given the lack of job security and unstable and inconsistent flow of such income. Their resources are limited and it becomes very difficult for them to initiate the process of earning a livelihood again.

Insecurity of tenure is also one of the biggest problems which haunt the slum dwellers.<sup>10</sup> They are not sure for how long they will be able to live in a particular area. Due to the nexus of politicians and builders, there are chances that slums will be eradicated and buildings, flats, houses, etc. will be constructed there.<sup>11</sup> This sense of insecurity disturbs their mental peace and they are not able to work properly with a free mind. They are apprehensive of the possibility of breaking their ‘houses’ by the authorities and for this reason only; it is recommended that governments should construct houses for them and ensure that they are not demolished.<sup>12</sup>

## C. SCHEMES AND LAWS-WHAT DID THEY ACHIEVE

- **RAJIV AWAS YOJANA** – This scheme was announced in 2009 having the motto of giving property rights to dwellers and making India free of slums

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8 Harshita Gupta & Krishangee Parikh, *Beyond the Right of Mere Existence: From the Lens of Slum Dwellers*, THE LEAFLET (July 15,2022) <https://theleaflet.in/beyond-the-right-of-mere-existence-from-the-lens-of-slum-dwellers/>.

9 Samar Pal vs. Union of India, W.P.(C) 4785/2008 & CM APPL. 9216/2008 (Del. HC).

10 Rebecca Lechinsky, et al., *Social Innovation as a Disruption of Tenure – Recognising Land Rights of Slum Dwellers in Odisha, India*, in DISRUPTIVE TECHNOLOGY, LEGAL INNOVATION, AND THE FUTURE OF REAL ESTATE 81 (Amnon Lehavi & Ronit Levine-Schnur, eds., 2020).

11 Sharad Vyas, *In Maharashtra, PM Modi Sees Nexus of Builders, Politicians, Mafia*, THE HINDU (Oct.16, 2019), <https://www.thehindu.com/elections/maharashtra-assembly/in-maharashtra-pm-modi-sees-nexus-of-builders-politicians-mafia/article29714280.ece>.

12 *Id.*

by 2014. The scheme talked about ensuring proper living conditions for the slum dwellers like water supply, lighting, etc. Its name was changed to *Pradhan Mantri Awas Yojana* in 2015 but the scheme failed to accomplish its task. With a budget approval of 150 crores, the program could solve the problems of slum dwellers, but it couldn't serve the purpose.<sup>13</sup> The basic reason for this was a lack of proper implementation strategy and indifference on the part of the strategists. More often than not, the policies framed by a government become the victim of corruption or undue interference. Had this scheme been implemented properly, it could have ended the miseries of slum dwellers to much extent. Doing surveys only won't solve the problem; rather everything should be made to be implemented properly on the ground by knowing the exact needs of people of different areas. The scheme had the aim of making affordable houses for the marginalized section of the society or people having low income and also to eradicate slums, but, has not been successful till now. A slum- rehabilitation scheme was launched to construct houses for the slum dwellers and loans were provided at affordable/subsidized rates to the poor people. This mission was supposed to be accomplished by 2022, but unfortunately, it has not been so. The applicability of rules and regulations framed under this scheme is not proper, ultimately leading to the failure of this policy. The reluctance of State governments in taking steps towards the implementation of the scheme has left the slum dwellers on their fate.

- **NATIONAL SLUM DEVELOPMENT PROGRAMME** – This was launched in 1996 and provided subsidies and loans to State governments for rehabilitating slum projects based on their urban population. It was subsumed under the Jawaharlal Nehru Urban Renewal Mission and discontinued from the financial year 2005-06.<sup>14</sup> An analysis of this program tells us that the Union government tried to balance the population of slum dwellers based on the urban area (city) population and gave this task of identification to the respective States, but the lackluster approach of different State governments failed this mission.

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13 *PMAY(Urban) – Progress*, PRADHAN MANTRI AWAS YOJANA, <https://pmay-urban.gov.in/> (last visited Apr. 21, 2022).

14 Robert M Buckley, et al., *Strategizing Slum Improvement in India: A Method to Monitor and Refocus Slum Development Programs*, 3(1) GLOBAL URBAN DEVELOPMENT MAGAZINE (2007).

- **THE SLUM AREAS (IMPROVEMENT AND CLEARANCE) ACT, 1956** – The objective of this Act was to provide for the improvement and clearance of slum areas in certain Union Territories. Section 3 of the Act defines the term ‘Slum Areas’ and focuses on the condition of certain things like natural light and air, water supply, drainage, facilities for storage, repair, etc. for declaring a building to be unfit for human habitation.<sup>15</sup> This Section tells that if a building is devoid of or has insufficient means mentioned above, it will be deemed to be unfit for living purposes. The report will be submitted by the officers to the competent authority (officer appointed by the Administrator of the Union Territory) regarding the condition of the building. Section 4 of the Act<sup>16</sup> talks about the improvement of slums and tasks the competent authority to take appropriate steps for improving buildings unfit for human habitation like giving time of not less than 30 days to the owner to repair the building unless it is in such a condition that it cannot be repaired. A perusal of this provision reflects the fact that the law is casting a duty on the owner of the building to make it fit and safe for living purposes, which is quite appreciating as the owner from time to time, will keep on maintaining the building knowing the fact that if the report about the damaged condition of his building is submitted, he will have to repair it later. Section 7 of the Act<sup>17</sup> empowers the appropriate (competent) authority to order the demolition of buildings unfit for human habitation and Section 9 talks about slum clearance and re-development where the authority after getting the report from its officers may declare an area to be free from buildings.<sup>18</sup> Freeing the area from buildings is because of their pathetic condition which is dangerous for the people living there.

## **D. WAY FORWARD**

Steps can be taken to bring slum dwellers forward in society. The first and foremost strategy for improving the condition of slum dwellers is ‘proper identification’. The areas where they live should be properly identified and

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15 The Slum Areas Improvement and Clearance Act, 1957, § 3.

16 *Id.* § 4.

17 *Id.* § 7.

18 *Id.* § 9.



then schemes related to their development be implemented accordingly. The creation of Special Zones in areas where the slum population is living will help in a big way as these zones will be used by the government to formulate policies. A proper census citing their living conditions, and source of livelihood should be conducted, and it should be ensured that they are getting the benefits of these schemes. Small and medium-scale industries should be constructed in their proximity so that they have no problem with respect to employment. Primary Health care centers should be made in their vicinity for sufficient care and diagnosis. The creation of opportunities in the home states of the needy people will help them to get jobs or any other kind of employment for their survival and thereby stopping them to move towards big cities. This will not only help them to get work in their native State but also in creating a balance of population across the nation. For this, all the State governments of India will have to leave behind their self-ego and work with a mutual understanding. The slum dwellers should not be mobilized only for electoral purposes, but potent and implementable solutions should be made for their survival.

Thirdly, a check on population control is the need of the hour. The government should come out with a two-child policy so that population growth remains stable. It will help in reducing poverty and ultimately the number of slum dwellers. The Central government should not hesitate in forming policies related to taking back some government facilities from those families who are increasing the population of the nation by having more than two children. This is a strict measure that should have been taken way back in the early 1960s. The importance of this step will be seen in the form of reduction of poverty, equal distribution, and management of resources, timely solving of problems, etc. It becomes easier for any government to bring slum dwellers or any other category of poor people into the mainstream if their population is within control.

Fourthly, the schemes for slum dwellers made by the government should be practical and viable for being implemented in India. For example, the government/s should come up with schemes that are easily implementable and do not require much 'formality' on the part of the people living in slum areas. Formality here means asking for too many documents from people to give them

any kind of government service/s. The documentation should be kept limited, though its authenticity should not be compromised. Less documentation would invite poor people (here referred to as slum dwellers) to claim benefits from the government schemes as it will be easy for them to follow the steps that are required to get the benefit.

Fifthly, the working and structuring of existing urban local bodies should be changed focusing on proper housing and employment of people living in slum areas. The corrupt officials should be punished in an exemplary manner and efforts be made towards laying down the foundation of housing for the 'needy'.

## **E. CONCLUSION**

Even after 75 years of getting independence, there still exists an unequal distribution of resources and facilities among the citizens of India. The latest World Inequality Report of 2022 reflects that the top 10 percent of the Indian people hold 57 percent of the total national income while the bottom 50 percent's share is a mere 13 percent.<sup>19</sup> It means that there are people who are still devoid of basic health facilities, food, and other means of livelihood, slum dwellers being one of them. Their approach toward life becomes negative when they see that they are not being helped by the people or the government. A country having a population of 135 crores, struggles to meet the demands of every individual or class/section of society. Needless to emphasize the fact that corruption at every administrative level worsens the scenario. The need of the hour is that not only the governments, but NGOs and other voluntary service societies should come forward and join hands in uplifting the status of people living in slum areas. Apart from this, taking steps for ensuring their social inclusion or including slum dwellers in the mainstream society like by giving jobs to them as per their capacity, organizing *nukkad nataks* for their upliftment by ensuring their participation in them, creating self-helping jobs for them, etc. will play an important role in diluting or finishing this divide.

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19 *India 'Very Unequal', Top 10% Hold 57% of National Income: Inequality Report*, INDIAN EXPRESS (Dec. 08, 2021), <https://indianexpress.com/article/india/india-very-unequal-top-10-hold-57-of-national-income-inequality-report-7661506/>.

Primarily, the focus should be on developing employment opportunities within the native State of poor people who tend to migrate from one place to the other in search of livelihood opportunities. It is important to generate chances and frame policies that are practically implementable or easily followed. However, over-reliance on the government for creating opportunities should be avoided and the citizens should involve themselves in creating fruitful opportunities for the poor and needy people. It is required to bring uniformity in society and more importantly, ensure the implementation of basic human rights of slum dwellers who have been suffering for a long time thinking their present condition to be a part of their fate and ultimately doing nothing to improve their condition. This balance of society is very important for the overall development of a developing nation like India and for this, a proper balance between 'slum clearance' and 'slum development' should be on the cards. In other words, the governments as well as the NGOs should try to formulate policies that are primarily focusing on the development of slums by giving the necessities of life including water, electricity, and proper sanitation facilities on the other hand, they should also ensure that slums are not being developed in areas that are used for public purpose like railways, hotels, schools, hospitals, etc. Eviction of slum dwellers or clearance of slums should be planned and executed by keeping in mind the needs of the society and also the slum dwellers. In *Pavement Dwellers' case*,<sup>20</sup> the Supreme Court had already said that pavement dwellers do have the right to livelihood implicit in Article 21 of the Indian Constitution and the eviction of pavement dwellers without giving them prior notice or opportunity of being heard is arbitrary and unconstitutional. Similarly, slum dwellers cannot be instructed to leave a particular place unless they have been given an alternate place of living or adequate compensation for their survival.

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20 Olga Tellis v. Bombay Municipal Corporation, AIR 1985 SCC 545.

