

Slums, housing and evictions: The contested domains of law and human rights

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Abstract

In August 2020, a three-judge bench of the Supreme Court of India ordered the removal of about 48,000 slum clusters in Delhi. This order brings back the discourse of “illegal encroachment” concerning slums in Indian cities. This position is in conflict with the poor, their livelihoods, and rights to have adequate housing. The role of the state is being questioned as it fails to provide the basics for its vulnerable citizens.

This paper attempts to analyse and present the issue within the Human Rights-Based Framework of development, considering “Right to Adequate Housing” as a human right and eviction as a violation of it. It discusses the relationship between social work and human rights, explaining why it is important for a social worker to stand with the vulnerable community. It outlines the role of a social worker in preventing eviction and working with slum dwellers (in the case of eviction), on their social, economic, and psychological aspects of rehabilitation. In the last part, the paper emphasises on the idea of “Right To The City” and stresses its importance for the nuisance discourse.

Keywords- Slums eviction, Right to Adequate Housing, Social Work Practice

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Introduction

In India, a slum is defined under the Slum Area Improvement and Clearance Act (1956), as “Residential areas where dwellings are unfit for human habitation by reasons of dilapidation, overcrowding, faulty arrangements and design of such buildings, narrowness or faulty arrangement of the street, lack of ventilation, light, or sanitation facilities or any combination of these factors which are detrimental to the safety and health”. In many instances, the judiciary has viewed these low-income urban residents as “encroachers” or “trespassers, which ignores not just the positive duties of the state to ensure inclusive urban planning and provide affordable housing for all but also violates the fundamental constitutional principle of Right to housing. The recent order of the supreme court in *M.C. Mehta v. Union of India*, 2020, seems to have been delivered with a similar understanding of slums as “illegal encroachment” and “nuisances” that pollute public spaces. Ghertner (2008) notes that almost all of Delhi violates some planning or building law, so much of the city’s building can be considered “unauthorized.” He raises the crucial question of why some of these areas are labelled as illegal and deserving demolition, while others are covered and formalized. The paper in the subsequent sections explores the recent order of the Supreme Court in the wider context of Human Rights-Based Framework and discusses the role of the social worker in working with the slum dwellers as a vulnerable community.

Order of the Supreme Court

The Environment Pollution (Prevention & Control) Authority (EPCA) requested the Supreme Court to direct the Railways to present a time-bound plan for the inventory of all solid waste generated in the Northern Region. These directions did not establish any relationship of waste being dumped with the slums in the vicinity of the railway tracks. However, the court ordered the removal of about 48,000 slum clusters located along the 140 km length of the railway tracks in North Delhi within three months. The order has become contentious because of the following reasons-

1. Human Rights Violation- The order fails to recognise the well-established principle of Right to Adequate Housing by previous judgements

2. Elite Bias- Despite there being residential buildings too that throw waste on such tracks the Court ordered for the eviction of jhuggies alone reveals a deep-rooted bias.

3. No Rehabilitation- The bench does not refer to the rehabilitation of those residents who are likely to be evicted from their jhuggis.

4. Ignorance of previous judgements- The order also fails to acknowledge the established precedent set by past judgements. In 1985, the Supreme Court in *Olga Tellishad* held that the “Right to Life” under Article 21 includes the “Right to Livelihood and Housing” which also entitles the right-holder to a right to notice and hearing before evictions and access to rehabilitation. Further, In *Ajay Maken v. Union of India*, 2019 Delhi High Court held that “People living in urban settlements should not be viewed as “illegal encroachers and those living in slums continue to contribute to the social and economic life of a city which is acknowledged by “Right To The City (RTTC)” .

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

Human rights-based framework and the right to adequate housing

According to the United Nations “Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status”. They are vital because they set the basic standards that

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

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are required for people to live with freedom, equality, and dignity. They grant freedom of choice and speech to all and the rights to basic needs required for their full development including access to education, water, sanitation, food, health, and housing. The fulfilment of human rights, based on international law, is legally binding for states upon adoption of human rights instruments. This requires the respect, protection and compliance of the rights enshrined in the Treaty and the prevention of violations of human rights and the complete enjoyment of human rights.

A human rights-based approach is a human development mechanism normatively based on international principles of human rights (participation, transparency, empowerment, transformation of social norms and non-discrimination) and operationally aimed at promoting and securing human rights. It seeks to analyse discriminatory practices and unjust distributions of power (structures) that impede development progress and ways to address them. It is a two-way relationship between the Rightsholders (women, children, elderly, LGBTQI+, differently-abled and other such groups) and the duty bearers (parliament, local governments, judiciary, police and bureaucracy) where the duty bearers fulfil its obligation to provide rights based on the human rights framework and the rights holders hold the duty bearers accountable to provide such rights. According to the UN-Habitat fact sheet No. 21 the right to adequate housing covers steps required to avoid homelessness, to prohibit forced evictions, to tackle discrimination, to target the most disadvantaged and oppressed communities, to ensure the security of tenure for all and to ensure adequate housing for all. Under international human rights laws and standards, a human rights-based approach to housing requires the recognition of adequate housing as universal and autonomous, but also indivisible, interdependent, and inter-related human rights (related to all other human rights). This means that the violation of the right to adequate housing can affect the enjoyment, and vice versa, of a wide range of other human rights. Access to adequate housing can be a prerequisite for the enjoyment of several human rights, including those relating to employment, health, social security,

voting rights, privacy, and education. Homeless people could not be eligible to vote, enjoy social services or obtain healthcare without evidence of citizenship. Schools may refuse to register slum children as there is no official status in their settlements. Insufficient housing may affect the right to health; for example, if houses and settlements have minimal or no clean drinking water and sanitation, their inhabitants can become critically ill.

Though India does not explicitly recognise an independent human right to adequate housing in domestic laws or policies, the judiciary (both the High Court and the Supreme Court) have time and again interpreted the Article 21 and other parts of the Constitution to include the human right to adequate housing within their ambit. In *Olga Tellis v. Bombay Municipal Corporation* (1985), the Supreme Court had held that the right to life under Article 21 includes the right to livelihood and housing, which in turn, entitles the right-holder to a right to notice and hearing before evictions, and access to rehabilitation. Further the Delhi high court in *Ajay Maken v. Union of India* (2019), strongly recognized and upheld the human right to adequate housing and relied extensively on international law to emphasize the obligation of the government to protect and fulfil the right. The Court acknowledged that forced evictions violate multiple human rights. Despite the development of rich jurisprudence (both nationally and globally) in favour of the right to adequate housing, the Supreme Court's current order seems to be motivated by what Kant calls "aesthetic judgment" i.e., a judgment based on a feeling. According to Ghertner (2008) courts do not have a sound legal basis for declaring slums as illegal rather if a slum appears to be polluting based on a judge's subjective view of "clean" then it is declared as polluting, nuisance and hence illegal. Such orders also undermine the very nature of slums as "distinct places" and reduces it to an "abstract space" without having any physical distinctiveness, social life and a sense of attachment and community to it. To quote Ghertner (2008), in its pursuit of making Delhi a "world-class city" spaces that appear polluting or unattractive (e.g., slums) which unfavourably represent Delhi in its "world-class" pursuits are being aggressively cleared even in the absence

of accurate information while developments that have the “world-class” look, (e.g., Delhi Commonwealth Games Village) despite violating laws and by-laws are granted amnesty and heralded as monuments of modernity.

Social work and human rights

The practice of human rights has so far been dominated by the legal profession which has developed a significant specialisation in human rights law. Other professions such as social work are also concerned with the promotion of human rights through its practice which extends beyond the more constrained practice of law. The social work profession since its inception has a strong tendency of identifying a core value for the profession. Social work is not seen as a neutral, objective or ‘value-free’ activity, but rather as work which is grounded in values and principles. This is aptly brought about by the global definition of the Social Work profession approved by the IFSW General Meeting and the IASSW General Assembly in July 2014.

“Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility, and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing”.

The global definition mentions “Human Rights” as one of the core principles of the social work profession. Many of the challenges and dilemmas facing social work can be looked at differently by framing social work explicitly as a human rights profession. Also, human rights can provide a moral foundation for their practice for social workers, both at the level of day-to-day work with ‘clients’ as well as in community development and policy advocacy and activism. Indeed, a human rights viewpoint can help connect these various positions into a cohesive and holistic view of the practice of social work. Social work embraces the first, second and third generation of human rights. The

first generation rights refer to civil and political rights, such as freedom of expression and conscience and freedom from torture and illegal detention; second generation rights refer to socio-economic and cultural rights, including rights to fair standards of education, health, and housing and minority language rights and the third generation rights focus on the natural environment and the right to the biodiversity of species. While in terms of practice in the arena of first-generation human rights, various advocacy models of social work are important, consideration of the second generation of economic, social, and cultural rights moves a human rights discourse to the core of mainstream social work. It is here that the right to adequate housing becomes a fundamental principle for the social work professional to work with the slum-dwelling communities within the rights-based framework.

Role of a social worker in working with slum dwellers

The vulnerable group is a term which is applied to groups of people (children, pregnant women, elderly people, malnourished people, prisoners, slum dwellers, migrants and refugees, people who use drugs, etc.) who, due to factors usually considered outside their control, do not have the same opportunities as other, more fortunate groups in the society. Human rights for vulnerable groups implies identifying and eliminating the social, cultural, and structural constraints which have inhibited their growth in society. The global definition of social work also calls social workers to engage with structural constraints that lead to the perpetuation of inequalities, discrimination, exploitation, and oppression. Since slums are a result of a failure of housing policies, laws, and delivery systems, as well as of national and urban policies (various structures), it becomes imperative for social workers to stand with the slum dwellers towards addressing structural barriers and promoting social inclusion and social cohesion. A social worker can engage in the following three ways-

1. Advocacy

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Slums must be seen as the result of a failure of housing policies, as well as of national and urban policies. Since the failure of policy is at all three levels—global, national, and local, there is a need for social workers to advocate for policy changes at all three levels (UN Habitat, 2003). At the global level, there is a need to counter policies that are leading to rapid urbanization, the commodification of land and housing, distortion in the land market and weakening of public sector housing provisions. At the national level, there is a need to advocate for inclusive urban policies which see slums as enormous economically productive spheres and therefore capable of contributing to the local economic development. Lastly at the local level, there is a need to push for policies which empower municipalities to cope with, or manage, the uncontrolled growth of urbanization which has left many slum citizens in a land of illegality, insecurity, and environmental degradation. However, rather than uncritically endorsing advocacy as a mode of progressive practice, it needs to be practised through an empowerment context that is genuinely based on the client's abilities instead of reinforcing the client's dependency on the social worker. The active participation of the slum dwellers in this process is also important which requires social workers to spread awareness in slum settings on slum dwellers' human right to adequate housing, through various Communication for Development (C4D) strategies.

2. Provision of services

In the absence of adequate formal provision of services within slums, there exist varied examples of informal arrangements ranging from illegal electrical connections to fake doctors to open sewers, erratic water supply and lack of sanitation and other services. This is aggravated in the case of evictions where the slum dwellers are left with little or no access to basic and psychosocial services. It is here that there is a need for social workers to provide basic and specialised services. These can include—

- Basic Services and Security which include fulfilling the wellbeing and physical needs (food, shelter, water, basic health care, control of communi-

cable diseases) of the affected population. This can be ensured through advocacy for the provision of services which should be accessible, affordable, and available to all and linking communities to various livelihood and social security programmes of the government and civil society organizations working in the area.

- Strengthening Community and Family Support which includes providing family and community support which can help the majority of the people to maintain Mental Health and Psychosocial Support (MHPS) wellbeing. This can be ensured by a social worker through organizing formal and non-formal education programmes, family reunification and forming women and youth groups.

- Focused Specialized Support which includes providing focused services to individual, family or group of people. This can include providing counselling, psychosocial support and forming support groups.

3. Social work Research

Social work research is one of the methods of social work which entails a systematic investigation into the problems in the field of social work. It attempts to provide knowledge about what interventions help or hinder the attainment of social work goals of development, social cohesion, and the empowerment and liberation of people. Research in social work plays a major role in translating abstract and assumptive knowledge of the society into tested knowledge. In the case of slum dwellers, social work research can contribute by critically studying the various judgements of the judiciary and bringing forward the “elite bias” in those judgements and making such analysis relevant for practice, studying the phenomenon of forceful evictions and rehabilitation and the role that social workers can play in the process, and identification of social work needs and resources, evaluation of programmes and services of the government and social work agencies working with slum dwellers are some of the areas in which social work researches can be undertaken.

“Hence a social worker needs to work at the individual, community, soci-

etal and the policy level to bring about a change in the way slums in India are looked upon by the state and its institutions”.

Conclusion

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

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

The Court further recognized the ‘Right To The City’ (RTTC) of the slum dwellers and stated that RTTC acknowledges that those living in JJ clusters in jhuggis/slums continue to contribute to the social and economic life of a city and comprises a wide range of service providers including sanitation

workers, garbage collectors, domestic help, rickshaw pullers, labourers who are indispensable to a healthy urban life. Prioritising the housing needs of such population should be imperative for a state committed to social welfare and its obligations flowing from Universal Declaration of Human Rights and other international conventions and agreements and the Indian Constitution. In the end, the paper discusses the important role that social workers can play in working with the slum-dwelling communities. Social work being a practice-based profession holds immense significance in bringing to light the “nuisance” discourse against the slum dwellers and advocating for housing needs of such population with an empowering and a liberating approach

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