



CHALLENGE OF URBAN CITIZENSHIP: HOUSING CLAIMS OF POOR IN INDIA

Diksha Jha

PhD Student

Jawaharlal Nehru University, New Delhi 110067

ABSTRACT

Housing is a crucial dimension of welfare which at the same time has received scant attention in social welfare legislations as compared to employment, education, and health. The latter three occupy a core position in welfare and social rights talks. This paper attempts to bring housing (for poor in urban areas) to the forefront and link it with the larger debates in social rights and welfare literature. In 2007, five of the world's ten megacities were located in North east and South Asia; these were Tokyo, Mumbai, Delhi (15,926,000), Shanghai, Kolkata and Dhaka. With the rapid urbanisation of Asian cities, complex issues related to poverty, marginalisation and exclusion have become more pervasive among its urban population. India was home to 110,200,000 slum dwellers that constitutes 35% of its urban population (UNESCAP 2009). According to the Slum Area Act of 1956, "slums" (popularly called jhuggis or bastis) may be defined as those "regions where buildings are unfit for human habitation for reasons such as dilapidation, overcrowding, and lack of ventilation, light and sanitary facilities" (Jha, Rao and Woolcock 2007, 233). Slum housing in Delhi began to gain impetus in immediate years following India's independence. Even while Delhi's total population has risen six fold during 1951-52, the slum population rose more than twenty times. Right since the period of the very first five year plan of 1951, slums began to be viewed by the state as a problem rather than solution to the dearth of low income

housing. As a result, it has been emphasising slum clearance and resettlement over a policy of community improvements (Jha, Rao & Woolcock 2007).

Further, the social responsibility of housing (for poor) in the context of India is never regarded as a right or a welfare measure that can be claimed directly by the citizens. The poor residing in cities resort to informal channels of negotiations to exercise such claims. While civil society activism remains largely middle class activism thus shunning out the poor from having access to spaces in urban neighbourhoods, it is the largely informal channels like local slum leaders or mediators who act as link between the political leaders and poor. This paper attempts to systematically substantiate these arguments by understanding the underlying complexities related to housing problems of the poor.

Keywords: urban citizenship, urban poor, welfare, rights, housing.

Social Rights and Welfare challenges in India

In a welfare state, according to Engelstad, “social responsibility for care is based not on charity, but on citizen rights” (Engelstad 2016). In industrialised societies, social rights in opposition to market relations are resources that provide access to citizens with welfare goods irrespective of their ability to pay. A welfare state will be strong if its social rights element is stronger. In order to secure the quality of democracy and welfare of the population, the value of social rights needs to be advanced in addition to ensuring free and fair elections (Engelstad 2016, 150). Social democracy, based on the principle of political equality faces the ultimate challenge of realising the goals of economic development and social justice through democratic means, and thus ensuring that realisation of social justice and democratic deepening serve each other (Tornquist and Harrisseds. 2016).¹ The four processes underlying such a development as enlisted by Tornquist and Harriss includes, building democratic political collectivities, strong democratic linkages between state and society, struggle (based on common interests and ideas) for universal civil, political and social rights and welfare policies, and finally, attempts at developing social pacts and coalition between sections of capital and labour.

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Regarding the creation of political collectivities, it has been argued that Global South, and in particular India, has faced problems of uneven development leading to fragmentation of movements and groups, geographically and based on specific interests and issues. Except for the state of Kerala in the early 20th century where subordinated caste groups came together to struggle for universal rights, the segments of migrant labourers, minorities and fragmented subordinated groups have rarely come together as broad collectivities. The strong linkages between state and society emphasises the interlinkages between civil society and state and an analysis of the role of informal channels. Through what has been termed as institutionalisation of the public sphere, which could go on to effectively check the “electoral market place” as well as the rule of the most powerful unregulated public sphere and lobbying and thus help in facilitating inclusive and effective governance (Tornquist&Harriss 2016).

Chandhoke (2016) in the context of India, argues that the gap in the “representation of the needs of the marginal sections of the population was filled up by civil society activism.” From 2004 to 2014, the civil society pressed the need for the rights of citizens to social goods. Once laws granting the right to information, to food, and to work had been adopted, activists continued to keep a watch and issued citizen reports (Chandhoke 2016). While the civil society has had success in pushing and lobbying for policies and measures related to employment and work, education, health, it may be argued that with regard to housing spaces for poor in cities, the civil society activism gets translated into middle class activism, which has the objective of evicting the poor from middle class neighbourhoods and so depriving them of, rather than helping them obtain, shelter.

A lot of court judgements related to slum and squatter evictions were largely inspired by middle class mobilisation cum activism in cities. In Delhi, more than a million residents of informal ‘slum’ settlements have been displaced over the last ten years largely due to the “political and legal associations of private property owners called RWAs (resident welfare associations) (Ghertner 2008). Ghertner (2012) argues that while there remains much focus on the juridical and institutional transformations enabling the rise of middle class power and the concomitant demolition of slums, removal of hawkers and beggars and the broader bourgeoisification of Indian cities, it is also required to pay attention to how “middle class

groups' mundane, often place specific constructions of civility gain traction in state policy and the popular urban imaginary. He attempts to analyse such narratives through which activist RWAs construct "slums as nuisances, that is, zones of incivility that violate normalized codes of urban conduct and appearance (Ghertner 2012, 1162). The following section documents how such middle class mobilisation against slum dwellers has resulted in the court judgements favouring such evictions at various points of time.

Contested urban spaces: Challenge of Urban Citizenship

This section seeks to assess the struggles of urban poor to claim citizenship through housing in the exclusionary urban spaces. The literature focuses on how bleak the claims of welfare state are for this category of urban underclass which sees nothing more than social inequality getting reproduced in multiple forms. It therefore remains to be seen what citizenship holds for these marginal citizens in the cities. The figure of the migrant produces "the maximum anxieties around which the discourse of crisis of citizenship are woven" (Roy 2010, 161). All models of citizenship see migration as leading towards processes of "social exclusion and incomplete, inadequate or discriminatory citizenship which have been characteristic of the social and economic transformations that have taken place since the 1980s, in the context of the structural adjustments sustaining the capitalist world economy." If one were to look at the ways that state and its institutions have used to address this crisis, one finds that "social exclusion remains integral to developmental and social action planning and legislation" (Roy 2010). Roy makes an interesting observation while pointing out how and what kind of 'migrant' and 'migration' invites discrimination and exclusion by the state. It is the "livelihood movement of only the working class poor who are subjected to discrimination and violence at the hands of both the state agencies and society" (Roy 2010). The movement for work or education of the rest of the urban dwellers is assumed to be 'normal' and does not feature as migration at all. So, it is the poor and the underclass migrating for work in the cities that are denied the basic access to urban spaces.

Court decisions have exhibited a shift in their position towards the urban poor, most of whom are migrants earning a meagre living working in the unorganized sector. The court decisions have moved from viewing the migrants as persons having rightful access to resources in cities to "unwanted encroachers and a burden on city's resources" (Roy 2010, 164). Usha

Ramanathan (2006) has documented the shift in the language and perception of the courts in the context of slum dwellers. In the *Olga Tellis and Others v. Bombay Municipal Corporation and Others* case (AIR 1985 SC 180) decided on 10 July 1985, the Supreme Court emphasized, for the first time, that the right to life and livelihood was linked to the dwelling place. Ironically, however, even as the Supreme Court “attested to a relationship between life, livelihood and the dwelling area, it rejected the petitioner’s plea to hold on to their dwelling place and upheld Bombay Municipal Corporation’s (BMC) decision to remove ‘encroachments on the footpaths or pavements’ as procedurally correct, fair and just” (Roy 2010, 164). The petitioners in this case were pavement and slum dwellers in Bombay. The PUCL, Committee for the Protection of Democratic Rights, and two journalists also joined the writ petitions. In 1981, the respondents, the State of Maharashtra and the BMC decided to evict slum dwellers and encroachers and deport them to their native home towns or places outside Bombay. Upon the demolition of the pavement dwellings, the petitioners challenged the action of the BMC in Bombay High Court. The High Court ruled that the petitioners could not claim any fundamental right to put up huts on pavements or public roads, asking them to vacate the huts by 15 October 1981. In their appeal to the Supreme Court challenging the High Court ruling, the petitioners argued that demolition of pavement dwellings and slum hutments deprived them of the right to livelihood guaranteed by Article 21 of the Constitution and that it was constitutionally impermissible to characterize the pavement dwellers as ‘trespassers’ because their occupation of pavements arose from economic compulsions.

The Supreme Court judgment wavered between, on the one hand, its recognition of the compulsions in the lives of migrant workers, the ‘filth and squalor’ in the slums and pavement dwellings and the recognition of BMC’s duty to reclaim public spaces for what the court saw as legitimate public use (Roy 2010, 165). The judgment reflects the “struggle of the Court in installing the right to shelter within the fundamental rights framework, while yet allowing the state the power to clear the streets and spaces in the interests of urban order” (Ramanathan 2006, 3193). A conflict of interest emerged between the pedestrian who would need to use pavements and the pavement dweller, and the existence of “dwellings on the pavement that was a constant source of nuisance to the public” which the municipal corporation was obliged to remove (Ramanathan 2006).

In *Chameli Singh and Others v. State of U.P. and Another*, decided in 1996 (AIR SCW 542), a bench of three judges of the Supreme Court held that the right to shelter was a fundamental right available to all citizens and it was read into Article 21 of the Constitution as encompassing within its ambit, the right to make the right to life more meaningful. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, and not just roof over their head but all necessary infrastructure that enables them to live and develop as human beings.

In the same year, in the *Ahmedabad Municipal Corporation v. Nawab Khan Ghulab Khan and Others* case (AIR 1997 SC 152), decided on 11 October 1996, the Supreme Court admitted an appeal against the Gujarat High Court's decision to put a stay on the "removal of encroachments by pavement dwellers in unauthorized occupation of footpaths of the Rakhial Road in Ahmedabad, a main road of the city." Similar to the stand it had taken in the *Olga Tellis* case the Supreme Court made it clear this time too that no one had the right to 'encroach and erect structures or otherwise on footpath, pavement or public streets or any place reserved for public purpose. At the same time, the state would have the constitutional duty to provide right to shelter to the poor and indigent weaker sections of society (Roy 2010, 169).

Thus in all the judgments, in the course of articulating the rights of the worker who migrated to the city in search of livelihood and found a dwelling on the pavements or in the slums, the Supreme Court did two things. While it enlarged the scope of right to life, it also limited it with "procedure established by law" (Roy 2010, 169). Thus the two municipal corporations were seen as performing their legal duties in removing encroachments from public land. Roy points out that in neither of the judgments was the "expression encroachment used in a way so as to impute an intention of encroaching onto slum and pavement dwellers. Encroachment emerged as a condition and outcome of a series of compelling circumstances in the life of a migrant worker" (Roy 2010, 169). In both the judgments, there was a "discernable chastisement of the municipal bodies for having allowed the encroachment to endure long enough to make it the basis for a claim for rehabilitation" (Roy 2010, 169).

Madhav Khosla (2010) brings in an important point about the conditional social rights framework adopted by courts in such cases. In such a model, the court, Khosla states, “strives hard to emphasise the importance of socio-economic guarantees” without any attempt to protect systemic social right. Had the court adopted the reasonableness approach, it would have “inquired into whether each person had access to housing or whether a reasonable number of persons had access to housing” in *Olga Tellis and Ahmedabad Municipal Corporation cases* (Khosla 2010, 749). In most of the PILs that have followed over the years by the residents’ welfare groups from middle class colonies for failure of the state to free the public spaces of encroachments, the Supreme Court has most of the time upheld these views and thus shifting its stand from earlier cases when ‘encroachment’ was seen as an inadvertent consequence of migration (a condition that manifested vulnerability of the migrant) to “now giving emphasis to the illegality of encroachment and thus dissociating it from its sociological contexts” (Roy 2010, 170). In the PIL of *Almitra H.Patel v. Union of India* (AIR 2000 SC 1256), the Supreme Court ordered the Delhi government and other authorities to remove ‘slums and unauthorized colonies’ on public land, dispossessing an estimated 35 lakh people. The court termed the “slum dwellers ‘encroachers’ whose illegitimate claim to land in compensation against dispossession from their *jhuggis* amounted to pickpocketing the tax payer.” The Court stated that ‘the promise of free land at the tax payer’s cost, in place of a *jhuggi* is a proposal which attracts many land grabbers. Rewarding an encroacher on public land with a free alternative site is like giving a reward to a pickpocket.’

Through her ethnography of struggles over housing waged by the urban poor in a squatter colony in NOIDA, Veena Das proffers that the dynamic relationship between life, law and exception creates conditions for the emergence of claims over citizenship for the urban poor. Proposing citizenship as a claim rather than status, she tries to show the struggles and promise for the poor of belonging to a polity. She illustrates the idea through the case of NOIDA where a whole cluster of shanties have been demolished in the last ten years. While many residents had to flee to other places in the late 1990s, there were still other cases where slum or *jhuggi* dwellers managed to hold on to their dwellings. In the cluster of about 350 *jhuggis* in the area under consideration, it was the negotiating skill of the local Pradhan (caste leader) that helped in keeping local conflicts at bay and ensuring that demolitions and evictions were evaded. On someone’s advice to get a stay order from a court to stall demolitions, the Pradhan decided to go to the High Court in the city of Allahabad though he didn’t know anyone, until one day a lawyer took notice of him and hearing his predicament

decided to file a petition (for stay order on the ground that the residents belonging to the Scheduled Caste category were economically poor, and hence should not be deprived of their homes and means of livelihood). As suggested by the lawyer, the jhuggi dwellers legally registered themselves as a Society under the U.P. Registration of Societies Act. They thus acquired the legal status of a Registered Society calling themselves the Harijan Workers Society for Social Struggle (HarijanMajdoorSangharsh Sabha). They succeeded in obtaining stay order from court and used it to bargain with the police (Das 2011).

As has been pointed out by Partha Chatterjee (2004) that civil society is for middle class and political society is for the poor, drawing from the case of Calcutta, it has been argued by a lot of scholars that “slum dwellers have greater voice and remarkable access to politicians and government officials” (Jha, Rao and Woolcock 2007). Middle class civic activists in Mumbai managed to clear public spaces of hawkers and poor, thus successfully capturing both “procedures and rhetoric of participatory citizenship to promote middle class interests” (Anjaria 2009). Thus, given the elitist and exclusionary vision of democracy (Harriss 2010) that the RWAs have, the political society and informal channels of negotiations with political parties remain the only viable option left for the poor to reclaim spaces in city. However, Holston brings out an important point of departure from Chatterjee’s claims by arguing that there are numerous ways in which the poor and marginalized groups negotiate their claims in the city and resorting to political society is one such way (Desai and Sanyal 2012).

The present chief Minister of Delhi and AAP leader Arvind Kejriwal has urged the Northern railway authorities to suspend demolition action against encroachments on its land for five years till the time these slums would be relocated. According to official estimates, nearly five lakh people reside illegally in the slums located in railway land. Considering that slum dwellers constitute a major chunk of the AAP’s vote bank, the Delhi government could not remain silent on such a matter (Ranjan 2015).

Conclusion

Thus as is evident from the above discussion on welfare and rights and housing concerns of urban poor in the Indian cities, this remains a complex matter as right to spaces in city for the

poor has never been a priority for the policy makers or even the political leadership. The civil society's role is completely transformed into middle class activism who redefine urban spaces and popular imaginary by regarding the poor and their slum residence to be filthy, unwanted and uncivil that needs to be demolished. The political class cannot overlook the concerns of the poor as they constitute a prominent votebank that needs to be looked after from time to time. As has been rightly pointed out by Harriss (2010), the political parties may be typically corrupt and undemocratic but they also serve as vehicles for addressing problems. The poor therefore resort to negotiating their claims through informal channels like the local slum leader (called *Pradhan*) as we saw in VeenaDas's account of slum dwellers in NOIDA and their claims to citizenship who act as a link between the poor and the political leadership.

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