

# An Analysis of Slum Dwellers and their Land Rights

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## Abstract

Human rights, under article 21 of the Indian constitution protects the Slum dwellers and forced Eviction violates the fundamental right of millions of people living in slums. The Constitution of India and the universal declaration of human rights give slum dwellers the right to choose their place of residence, and the right to a healthy life. However, the absence of a comprehensive development plan for slums is accelerating a spatial divide. The right not to be forcibly evicted is an element of the human right to adequate housing.

## Introduction

The word “slum” is used to describe informal settlements within cities with inadequate housing and miserable living conditions. India is the third largest country that suffers from poverty, malnutrition, diseases, unhealthy conditions, and more in Indian slums, which is alone responsible for more deaths of children than any other country in the world. Because of the dramatic rise of slums after independence, Slums manifest deprivation that transcends income poverty. Slum dwellers in India are characterized by acute over-crowding, and unsanitary, unhealthy and dehumanizing living conditions.

## Slum Dwellers and their rights

As per section 3 of the Slum Areas (Improvement and Clearance) Act, 1962<sup>1</sup>, those residential areas where dwellings are in any respect unfit for human habitation by reasons of dilapidation, overcrowding, faulty arrangements and designs of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors which are detrimental to safety, health and morals.

The above amounts to human rights violations and infringement of basic fundamental rights. According to India Housing Report<sup>2</sup>, around 100 million people are living in slums which is more than the population of Australia. The United Nations Rights to Housing seeks to promote equal access to the potential benefits of the city for all urban dwellers. This has significant implications for both slum upgrading and relocation and redevelopment initiatives, as well as rental and social housing.<sup>3</sup> International human rights law recognizes everyone’s right to an adequate standard of living, including adequate housing.

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<sup>1</sup>Slum Areas (Improvement and Clearance) Act, 1962, Section 3, 1962 (India).

<sup>2</sup>Emily Rains and Anirudh Krishna, “India Housing Report” (Jan. 20, 2023, 10:00AM), <https://indiahousingreport.in/outputs/opinion/a-continuum-of-living-conditions-and-property-rights-in-indian-slums/>

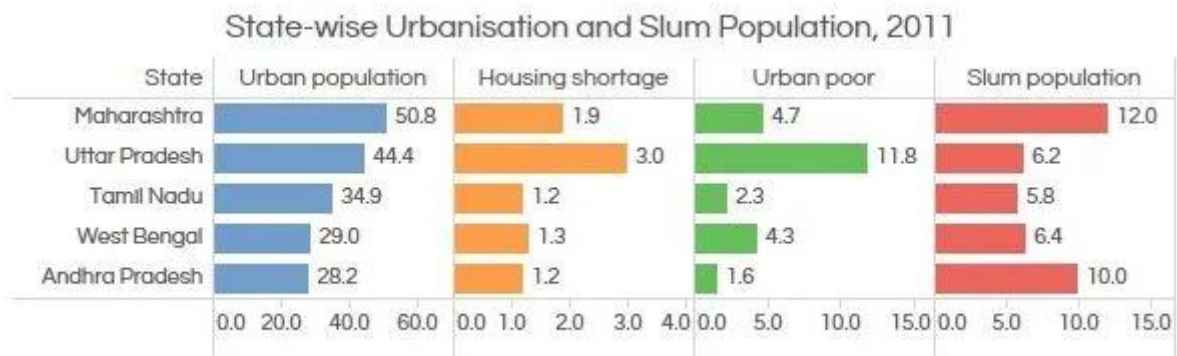
<sup>3</sup>Office of the United Nations High Commissioner for Human Rights, “The Right to Adequate Housing” (Jan 20, 2023, 9:45 AM), [https://www.ohchr.org/sites/default/files/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FS21_rev_1_Housing_en.pdf)

### Right to adequate housing

The right to adequate housing is relevant to all States, as they have all ratified at least one international treaty referring to adequate housing and committed themselves to protect the right to adequate housing through international declarations, plans of action or conference outcome documents. Several constitutions protect the right to adequate housing or outline the State’s general responsibility to ensure adequate housing and living conditions for all.

The United Nations Committee on Economic, Social and Cultural Rights has underlined that the right to adequate housing should not be interpreted narrowly. Rather, it should be seen as the right to live somewhere in security, peace and dignity. • Adequate housing must provide more than four walls and a roof. Several conditions must be met before particular forms of shelter can be considered to constitute “adequate housing.” These elements are just as fundamental as the basic supply and availability of housing.

Here is a table with an analysis of state-wise urbanization and slum population according to a 2011 census.<sup>4</sup>



**Protection against forced evictions** - Protection against forced evictions is a key element of the right to adequate housing and is closely linked to the security of tenure. Forced evictions are defined as the “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”<sup>2</sup> According to the United Nations Human Settlements Programme (UN-Habitat), at least 2 million people in the world are forcibly evicted every year, while millions are threatened with forced evictions.<sup>5</sup>

### Problems faced by slum dwellers in India when land rights are denied

**Overcrowding and High Density** - Overcrowding has been associated with a low space per person living in an area, high occupancy rates, cohabitation by different families and a high number of single-room units. Mostly slum-dwelling units are overcrowded, with five to six more persons sharing a one-room unit used for cooking, sleeping and living.

**Lack of necessities** is one of the most frequently mentioned characteristics of slum definitions worldwide. Lack of access to improved sanitation facilities and improved water sources is the most important feature, sometimes supplemented by the absence of waste collection systems, electricity supply, surfaced roads

<sup>4</sup>FormIAS, “analysis of state-wise urbanization and slum population”, (Jan 21, 2023, 10:00 am), <https://blog.forumias.com/slums-in-india/>

<sup>5</sup> UN-Habitat, Global Report on Human Settlements 2007: Enhancing Urban Safety and Security (Nairobi, 2007).

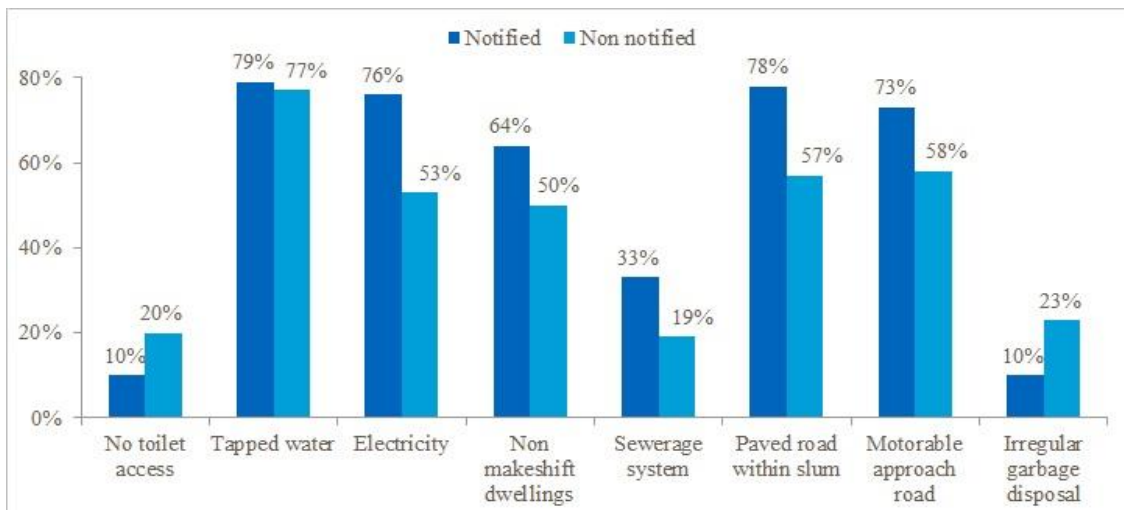
and footpaths, street lighting and rainwater drainage.

**Substandard Housing or Illegal and Inadequate Building Structures** - Many cities have building standards that set minimum requirements for residential buildings. Slum areas have been associated with a high number of substandard housing structures, often built with non-permanent materials unsuitable for housing given local conditions of climate and location. Factors contributing to the structure being considered substandard are, for example, earthen floors, mud-and-wattle walls or straw roofs. Various space and dwelling placement bylaws may also be extensively violated.

**Unhealthy Living Conditions and Hazardous Locations** Unhealthy living conditions result from a lack of basic services, with visible, open sewers, lack of pathways, uncontrolled dumping of waste, polluted environments, etc. their houses can be built on hazardous locations or land unsuitable for settlement, such as floodplains, in proximity to industrial plants with toxic emissions or waste disposal sites, and on the areas subject to a landslide. The settlement layout may be hazardous because of a lack of accessways and high densities of dilapidated structures.

**Insecure Tenure, Irregular or Informal Settlements** -Several slums have considered lack of security of tenure as a central characteristic of slums and regard lack of formal document entitling the occupant to occupy the land or structure as prima facie evidence of illegality and slum occupation. Informal or unplanned settlements are often regarded as synonymous with slums. Mostly emphasise both informality of occupation and the non-compliance of settlements with land-use plans. The factors contributing to non-compliance are settlements built on land reserved for non-residential purposes or invasions of non-urban land.

**Minimum Settlement Size** - Many slums also require some minimum settlement size for an area to be considered a slum, so that the slum constitutes a distinct precinct and is not a single dwelling. Examples are the municipal slum definition of Delhi which requires a minimum of 700 square meters to be occupied by huts, or the Indian census definition, which requires at least 300 population or 60 households living in a settlement cluster.



**A community-based cross-sectional survey** was designed to determine the prevalence of health conditions using a mobile screening toolkit-THULSI (Toolkit for Healthy Urban Life in Slums Initiative).<sup>6</sup> A total of 1186 households were surveyed and 3693 people were screened. More than three fourth (70.4%)

<sup>6</sup> George, C.E., Norman, G., Wadugodapitya, A. et al. Health issues in a Bangalore slum: findings from a household survey using a mobile screening toolkit in Devarajeevanahalli. BMC Public Health 19, 456 (2019).

of the population was below the poverty line. Only one-third had a regular job and the average daily income was 5.3\$ and 2.6\$ in men and women respectively. The prevalence of hypertension (35.5%), diabetes (16.6%) and anaemia (70.9%) were high in the screened slum population. Most of the people (56.5% of hypertensives and 34.4% of diabetics) were screened for the first time. Almost half of the children under the age of five years were stunted.

#### **A habitat area should not have the following features:**

- Compact areas of at least 300 populations or above & 60-70 households & poorly built congested tenements.
- Dilapidated houses / semi-permanent structures of less than 25 sqm area.
- Poorly built congested tenements.
- Lacking sanitary facilities.
- Lacking access to safe drinking water within 150 m.
- Unhygienic environment & adequate infrastructure.
- Specific preference for socially disadvantaged sections.<sup>7</sup>

#### **Legal observations: Constitutional, Human rights and other legal provisions**

**Article 21** is a combination of many fundamental rights, like the right to live with human dignity, the right to health, clean drinking water, a clean environment, pollution-free air, informed, privacy, right to shelter, livelihood, and last two the rights which are violated by the Order of Supreme Court, along with this fundamental right this order of Supreme Court has also violated the principles of natural justice. The Constitution of India gives the citizens the right to choose their place of residence, and the right to free movement.

While **Article 39** of the Constitution casts a duty upon the State to ensure that all citizens have adequate means to have a livelihood, in the case of slum dwellers, by evicting them from their present location to another, municipal authorities put an impediment for them to find new sources of income which, in turn, runs contrary to Article 38, which prescribes that the State must provide for adequate opportunities and take steps to enhance the quality of life.

**According to section 3 of Property Rights<sup>8</sup>** - In the form of dwelling space. —(1) Notwithstanding anything contained in any law for the time being in force, every landless person who is a permanent resident of the State and lives in a slum area in any city or urban area as of 01-01-2010 shall be entitled to a dwelling house at an affordable cost

For this sub-section, the dwelling house shall be of a minimum twenty-five square meter carpet area, or where land is being allotted, the allotment shall be of a minimum area to allow the construction of a dwelling house of a minimum twenty-five square meter carpet area. (2) Every slum dweller eligible as per sub-section (1) shall be given a legal document of entitlement.

**Human rights** are important as they set the minimum standards that are essential for people to live with

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<sup>7</sup> Raunak Prasad, “Problems and Prospects of Slums in India”, Volume 03, International Journal of Multidisciplinary Approach and Studies.

[https://www.researchgate.net/publication/338832007\\_Problems\\_and\\_Prospects\\_of\\_Slums\\_in\\_India](https://www.researchgate.net/publication/338832007_Problems_and_Prospects_of_Slums_in_India)

<sup>8</sup> Property Rights to Slum Dwellers Act, 2012, Section 3, Act no. XI of 2012.

freedom, equality and dignity.<sup>9</sup> The human right to adequate housing is recognized in international human rights law as a component of the right to an adequate standard of living, enshrined in the Universal Declaration of Human Rights (UDHR, adopted in 1948) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, adopted in 1966). It is also enshrined in other UN treaties' provisions of which all states have ratified at least one.<sup>10</sup>

### Judicial observations: Judgments

*The PG Gupta v. State of Gujarat and Ors*<sup>11</sup>, the case also states that the “Right to shelter under Art.-19(1)(g), when read with Art.-19(1)(e) as well as Art.-21 of the constitution of India, comprises “the right to residence as well as to settlement” court also stated that it is an essential duty of the state to assign those people who are being evicted a permanent housing accommodation, in the scheme of housing.” There are many cases at this point where SC has held that the right to shelter is a part and parcel of article 21 as well as article 19, like *State of Karnataka v. Narasimhamurthy*, *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*.

*Sundama Singh and Ors. v. Government of Delhi and Anr*<sup>12</sup>., The Court observed that “What every often is overlooked is that when a family living in Jhuggi is evicted forcibly, each member of such family loses a bundle of their rights i.e., right to livelihood, right to the shelter which includes right to land, right to education, right to health, right to access to civic amenities and public transport and above all of these the important right: the right to live with dignity.”

Further, the court stated that the duty of the state before carrying out eviction is: “To perform a survey of those people who will be facing eviction to determine their eligibility in the scheme of rehabilitation, also Such eviction must be performed after consulting every person at the risk of eviction in a significant way.”

*Ajay Maken v. Union of India*<sup>13</sup>W.P.(C) 11616/2015, CM APPLs.31234/15, 3033/16 & 10640/17 5,000 slum dwellers' eviction on the railway land was in question. The Delhi High Court held that before demolishing the dwellers' houses, adequate enumeration was not done. The Court further explained that slum dwellers' right to rehabilitation and adequate housing can't be denied in any case and it was also observed by the court that a proper arrangement has to be done by the responsible authorities before effecting any evictions.

*Olga Tellis & Ors v Bombay Municipal Council*<sup>14</sup>, Housing, Rights). The ruling made it mandatory for the authorities to provide alternate accommodations to slum dwellers if their shantytowns were demolished. However, the inhuman demolition and eviction of many families.

### Government initiatives, policies and programs

<sup>9</sup> UN habitat, “Human Rights In Cities Handbook Series”, Volume 1, (Last visited on Jan 12, 9:00 AM), <https://unhabitat.org/sites/default/files/download-manager-files/The%20Human%20Rights-Based%20Approach%20to%20Housing%20and%20Slum%20Upgrading.pdf>

<sup>10</sup> UN HABITAT, “The Right to Adequate Housing”, Fact Sheet No. 21/ Rev. 1, (Last visited on Dec 31, 3:00Pm), [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf)

<sup>11</sup> PG Gupta v. State of Gujarat, 1995 SCC, Supl. (2) 182 JT 1995 (2) 373

<sup>12</sup> Sundama Singh and Ors. v. Government of Delhi and Anr CIVIL APPEAL NO(S). 21806-21807/2017 (ARISING FROM SLP (C) NOS.6626-6627 OF 2015.

<sup>13</sup> Ajay Maken v. Union of India, W.P.(C) 11616/2015, CM APPLs.31234/15, 3033/16 & 10640/17

<sup>14</sup> Olga Tellis & Ors v Bombay Municipal Council [1985] 2 Supp SCR 51



The Odisha government commenced the world's largest slum titling project by ordaining **Odisha Land Rights to Slum Dwellers Act of 2017**<sup>15</sup> It aims to assign land rights to eligible slum dwellers for redevelopment, rehabilitation and up-gradation of slums in the Notified Area Councils (NAC) and Municipalities. Under the Act, the government aims to provide approximately 2,00,000 households with formalized land rights to reduce insecurity, increase welfare, provide access to necessities, and improve the lives of millions of its citizens.

**Integrated Housing & Slum Development Programme (IHSDP)**<sup>16</sup>: Integrated Housing & Slum Development Programme (IHSDP) was launched by GoI by merging the schemes of NSDP and VAMBAY. The objective of the scheme is to provide adequate Shelter and basic infrastructure facilities to slum dwellers in urban areas. Interest Subsidy Scheme for Housing the Urban Poor (ISHUP): The Scheme envisages the provision of interest subsidy to economically weak sections and Low-income groups to enable them to buy or construct houses.

**Pradhan Mantri Awas Yojana**<sup>17</sup>- **“Housing for All (Urban):** Launched in 2015, the scheme seeks to provide central assistance to implementing agencies through States and UTs for providing houses to all beneficiaries by 2022. This includes slum rehabilitation with the participation of private developers using land as a resource, Promotion of affordable housing for weaker sections, Affordable housing in partnership with public and private sectors and finally subsidy for beneficiary-led individual house construction/enhancement.

**Valmiki Ambedkar Malina Basti Awas Yojana (VAMBAY):** Introduced in 2001, it focused on shelter for the urban poor, with 20% of the total allocation for community sanitation facilities under the Nirmal Bharat Abhiyan (NBA) program. The Jaga mission was also introduced where the land rights in corporation areas – Bhubaneswar, Cuttack, Berhampur, Sambalpur and Rourkela will be given land rights conferred upon slum dwellers in 109 smaller towns under the Odisha land rights to slum dwellers act 2017 under the Jaga mission, they have provided land rights to nearly 1.75 lakh slum dwellers living in 109 municipalities. Many people have benefited from this decision.

Central government act, the **slum areas (Improvement and Clearance) Act, 1956**– Section 14 talks about the right to receive compensation.—Every person having any interest in any land acquired under this Act shall be entitled to receive from the Central Government compensation as provided hereafter in this Act. Therefore if eviction takes place rightful compensation is required to be made.

**The Delhi Urban Shelter Improvement Board (DUSIB)** has been manufacturing and deploying ‘mobile toilet vans’ over the last 15-16 years for large public events and across slums. The toilet vans are stationed within accessible distance to the slum community and connected either to the sewerage network of the city or to a septic tank that gets evacuated periodically.<sup>18</sup>

### **Recommendations for an effective housing condition for slum dwellers**

**Building codes and regulations should be realistic**, enforceable, and reflect the local community's lifestyle and needs. For example, this means that they may have to be flexible enough to allow housing that is built incrementally, out of low-cost materials and on small plots of land.

<sup>15</sup> Odisha Land Rights to Slum Dwellers Act of 2017 (India)

<sup>16</sup> Government of Assam, Housing and Urban Affairs, (last visited on Dec 14, 3:00Pm), <https://tcp.assam.gov.in/schemes/integrated-housing-slum-development-programmeihsdp>

<sup>17</sup> Ministry of Housing and Urban Affairs, <https://pib.gov.in/newsite/erecontent.aspx?relid=1041>

<sup>18</sup> Delhi Urban Shelter Improvement Board, <https://delhishelterboard.in/main/>

**Providing for Adequate housing and preventing forced eviction** -Article 43 the right to ‘accessible and adequate housing’ for ‘everyone’. Since it entered into force, local communities threatened with eviction have tested the justifiability of the Right to Adequate Housing, seeking judicial protection against forced eviction in court. The Human Rights-Based Approach to the issue of forced evictions reaffirms the duty of the States to protect, respect and fulfil the human rights of individuals, ruling in favour of the evicted communities

**Slum upgrading and compensation for forced eviction should be taken seriously** - Slum upgrading is a key strategy in national poverty alleviation. At its most basic, slum upgrading initiatives focus on the improvement of physical services such as roads and drainage, and frequently improve the quality of the housing. It starts with urban managers integrating slums into broader city-wide planning and urban development processes. Ultimately, the most useful approach is the one that takes account of changes to urban governance so that community capital can be maintained and improved long-term, with civil society heavily involved in a partnership with the government.

**Long-term Strategies for adequate housing** - Long-term policies should target the root causes of slum formations, with the implementation of socio-economic programs offering affordable housing options to the poorest and most marginalized of the society, combined with structural reforms to align the national legal system with international human rights standards.

**Resettlement and Rehabilitation** - Public investments must focus on providing access to basic services and infrastructure. The cities need to invest in housing, water, sanitation, energy, and urban services, such as garbage disposal. These services and infrastructure must reach the poor living in informal settlements.

**The Participatory Enumeration Exercise** adopts a participatory approach that considers both formal and customary rights and has the objective to ascertain titles and rights over the land by members of the local community.

**The Community Mortgage Program (CMP)** utilizes a novel system of mortgage financing whereby an undivided tract of land might be acquired by several beneficiaries through the concept of community ownership. The Philippines case illustrates how a land consolidation and upgrading scheme that gives squatters access to formal credit, and assists residents helped squatters in purchasing the land they already occupied from the legal owners via affordable housing lands - and at the same time allowing owners to sell their land and revive dead capital.

**State governments have to develop strategies** to prevent the formation of new slums. These should include access to affordable land, reasonably priced materials, employment opportunities, and basic infrastructure and social services.

**Urban resilience The Smart Solution** Urban Resilience reduces people’s vulnerability strengthens their capacity and reduces the risk of hazards in slums. This is done via a **Participatory Urban Risk Reduction** Planning Process with all relevant stakeholders. For this Cordaid has developed specific tools such as the “Urban Collaboration Game” and the “Community managed disaster risk reduction training manual”.

**Youth & Employment The Smart Solution Youth & Employment** offers two tracks to young people: a capacity-building program to become an employee in a local company, and another program to become an entrepreneur. Local companies that need a new labour force are involved to identify the demand side. The entrepreneurship program is designed together with local microfinance institutions (MFI’s), NGOs and the private sector.

## Conclusion

This paper has brought light to the various challenges faced by slum dwellers regarding land rights and the perspective of the constitution and human rights on slum dweller's land rights, various initiatives taken by the government to implement the laws on land rights and make it more effective, however, there is still a lack of legislation and need for effective implementation for any kind of progress. The main objective of focusing on land rights is to provide shelter for the slum dwellers and prevent forceful eviction as it is their right as human beings to have a home.