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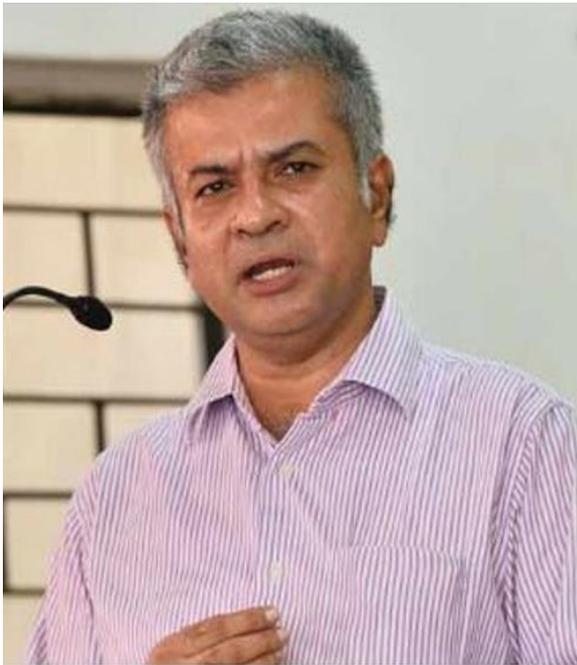
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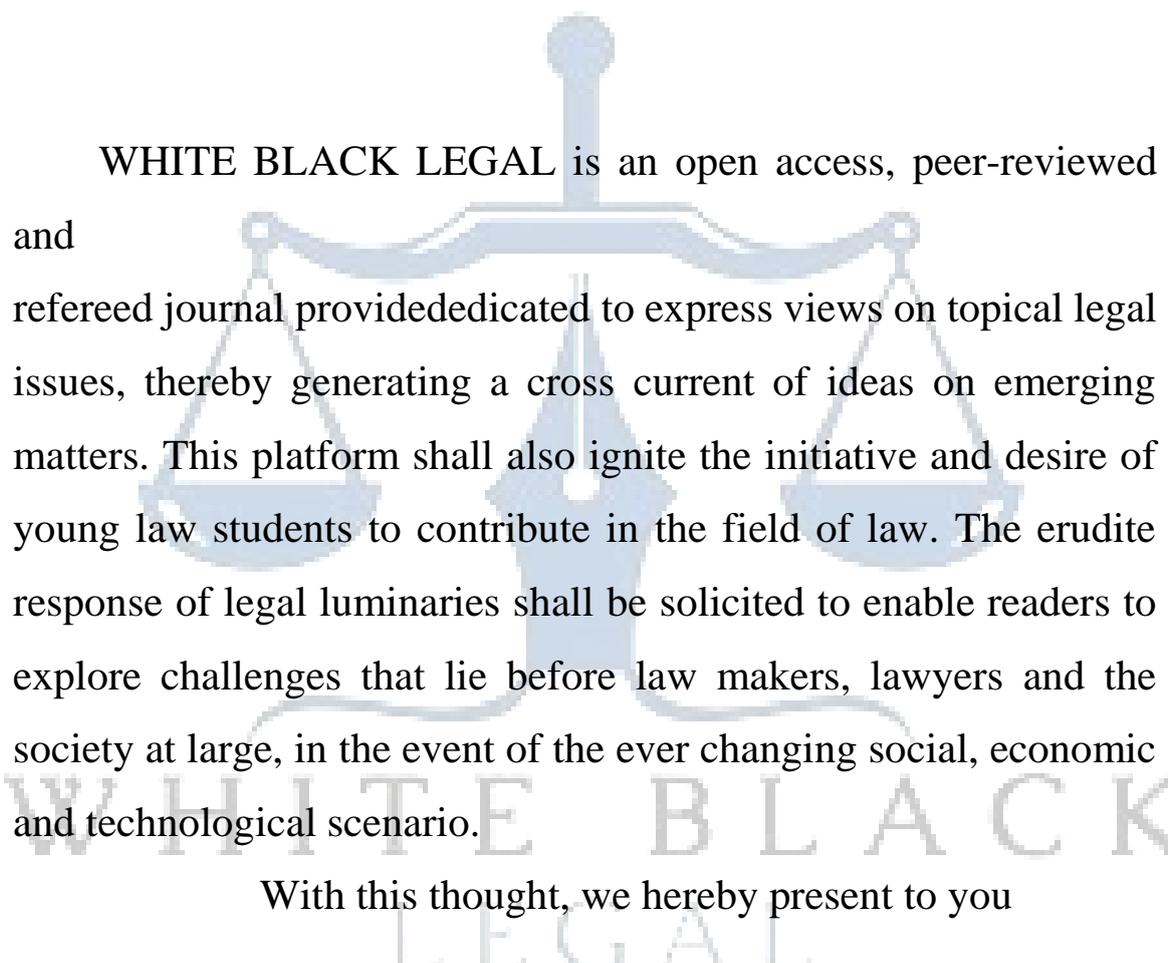


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

RIGHT TO HOUSING AND LIVELIHOOD TO URBAN POOR

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“The inefficiencies of governmental agencies have acquired axiomatic status, and the statutory power to acquire control over land in the city has been preserved while the statutorily mandated duty to integrate the urban poor into the city and provide them housing and livelihood has been shelved, in the interests of pragmatism”

– Usha Ramanathan, Illegality and the Urban Poor

INTRODUCTION

The author made the decision to depict this disparity in India's urban area before confronting the realities of the situation. The author investigated the nearby area of the campus known as Bharat Vihar, near Dwarka sector 14, New Delhi, with this goal and aim in mind. Despite having some understanding of the working and living situations of the poor people living in this area due to prior visits to that area and having interaction with locals living out there, the author was completely shocked by the severity of the pervasive suffering on exploring it further. These settlements frequently have poor living conditions such as dirty stagnant water, clogged sewers, small streets, crowded housing, and mountains of waste, poor sanitary installations and have restricted access to basic necessities like irregular water and power supply.

URBANISATION AND POOR

Rapid urbanisation is taking place across the world. There were over 3.9 billion people living in urban areas, and by 2050, that number is projected to rise to 6.3 billion.¹ This tendency is particularly noticeable in India, the urban population in India increased from 27.8% in 2001 to 34.0% in 2011, according to official figures from the Indian government. 40.76% of the

¹ Neel Ratan, ‘These are the challenges faced by India’s urban poor-and how we can solve them’, World Economic Forum, April 8, 2016, available at: <https://www.weforum.org/agenda/2016/04/these-are-the-challenges-faced-by-india-s-urban-poor-and-how-we-can-solve-them/>

population of the country is anticipated to live in urban areas by 2030, according to a poll conducted for the UN's State of the World Population report in 2007.²

Urbanization presents a complex mix of opportunities and challenges for those living in poverty. Urban India is overrun with "poor" people, and due to extensive migration, the country's poverty is primarily moving from rural to urban over time³. While many of those moving to urban areas do so in pursuit of employment and higher standards of living, millions wind up living in slums, and the situation for the urban poor is getting worse. Slums and informal settlements have expanded as a result of urbanisation in numerous cities throughout the world, including India. There are nearly 65.5 million Indians living in urban slums, according to the country's 2011 Census, and 13.7% of the urban population was below the poverty line in 2011.⁴ In India now, one in six urban residents is below the poverty level and living in the slum areas.

The 21st century saw widespread rural to urban migration in Delhi, with more than 11 million residents and the population of Delhi has increased by 4.1%, as per the 2011 census compared to the 2001 census, showing the fastest rate of urbanisation in the world.⁵ The slums of Delhi are considered to be the dirtiest among the nation's major urban cities. According to a survey done in Delhi for the 69th phase of the National Service Scheme in the year 2012, there were over 6,343 slums with more than one million homes and where fifty-two percent of the population of the city live.⁶

Delhi is one of the largest cities in India and still it has over one third of its residents living in slums with no access to basic necessities. Without any careful planning by the government, the city has grown haphazardly. The majority of people in the city reside in slums without access to even the most basic essentials.

² Akanksha Sharma, 'Cities of the Poor: A view on Urban Poverty in India', The Times of India, November 21, 20019, available at <https://timesofindia.indiatimes.com/blogs/in-the-name-of-development/cities-of-the-poor-a-view-on-urban-poverty-in-india/>

³ India's Urban Challenges, The World Bank, July 14 2011. Available at: <https://www.worldbank.org/en/news/feature/2011/07/04/indias-urban-challenges>

⁴ "Leveraging Urbanisation in India", The World Bank, September 24, 2015, available at: <https://www.worldbank.org/en/country/india/brief/leveraging-urbanization-india>

⁵ "Over 100 years of India's Urban revolution", Downtoearth, available at: https://www.downtoearth.org.in/dte-infographics/58589_urban_revolution.html

⁶ Sakshi Gangwar, Febi DA, Prajeev Narayan Bhageshwar, Shriya Bajaj, 'Rapid Urbanisation: where do poor stand?', Downtoearth, 24 August 2021, available at: <https://www.downtoearth.org.in/blog/urbanisation/rapid-urbanisation-where-do-urban-poor-stand--78613>

Housing in informal settlements and slums is often overcrowded and of poor quality, with many families living in cramped and unsanitary conditions. These settlements frequently have poor living conditions such as dirty stagnant water, clogged sewers, small streets, crowded housing, and mountains of waste, poor sanitary installations and have restricted access to basic necessities like irregular water and power supply.⁷ Additionally, these settlements frequently lack adequate waste disposal methods, which might worsen their living conditions. For instance, just 71.2% of urban families have access to clean drinking water inside their homes, and 1 in 5 urban households rely on common toilets rather than having their own. This also explains why India is home to roughly half of the world's open defecators.

It has been discovered that rather than just being poor, a certain class of people migrates when it comes to comprehending who makes up slum dwellers or migrants in general. Usually, the marginalised section of the Indian society such Schedule Caste or Schedule Tribe are found in the slums. Even in the Bharat Vihar, from where we have clicked the photos, we found that only the people belonging to the lower caste (Dalits) are residing in that area.⁸ Due to the government's failure to provide resettlement to Tribal communities people after forcing them off their own land for a development project in the forest area, a large number of tribal members also relocated to this slum.⁹ Even though there is a law such Forest Right act, 2006¹⁰ and PESA, 1996¹¹ that talks about and protects their resettlement, the government is unable to give them a better place to live in exchange for acquisition of their land for a development project or public purpose. As a result, they end up living in slums in the urban area with no means of support.

AFFORDABLE AND ADEQUATE HOUSING FOR URBAN POOR

The urban poor are frequently forced to live in slums or other informal settlements, where they suffer significant health and safety risks, due to a lack of housing options. Many of the

⁷ Akanksha Sharma, 'Cities of the Poor: A view on Urban Poverty in India', THE TIMES OF INDIA, November 21, 2019. Available at: <https://timesofindia.indiatimes.com/blogs/in-the-name-of-development/cities-of-the-poor-a-view-on-urban-poverty-in-india/>

⁸ Goutham Raj Konda, Slum numbers show cities don't help Dalits shed caste. Indian Express. 29 November 2020. Accessible at- <https://indianexpress.com/article/opinion/columns/slum-numbers-show-cities-dont-help-dalits-shed-caste-7072206/>

⁹ Sarojini Nadimpally, Deepa Venkatachalam and Adsa Fatima, 'Eviction of Tribals: Forced Displacement and Its Links With Poor Health', THE WIRE, 28 February, 2019 available at: <https://thewire.in/rights/supreme-court-eviction-tribals-displacement>

¹⁰THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006 (Act No. 2 of 2007)

¹¹ THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996 (ACT No.40 OF 1996).

impoverished individuals who migrate to metropolitan centres in search of work are compelled to make a living by selling things on the streets since these areas are unable to handle the enormous influx of poor people. Even though appropriate governmental interventions have been made to better these individuals' living circumstances, they are nonetheless referred to as "encroachers" on "public land," and their very survival is at the whim of the government and its agencies.

According to Amitabh Kundu's argument, urbanisation in India is actually "exclusionary" (A. Kundu, 2009).¹² By saying this, he is implying that emigration to urban regions must take into account the growing 'push' factor away from cities, with the inability to obtain adequate housing as the main example. According to the Kundu Committee Report, India has a total housing shortfall of 18.78 million units.¹³

The Indian government's Pradhan Mantri Awas Yojana (PMAY) housing programme was introduced in 2015 with the aim of giving the urban poor access to affordable housing. By 2022, the programme hopes to have given all qualified beneficiaries pucca housing with the most basic utilities.¹⁴ The PMAY-G offers qualified beneficiaries financial aid for housing construction or renovation in rural areas. People from Below Poverty Line homes, SC/ST households, and non-SC/ST households are all eligible for PMAY-G benefits.¹⁵ There are some more governmental scheme launched in the past such as The Jawaharlal Nehru National metropolitan Renewal Mission (JNNURM) is a programme that was introduced in 2005 with the aim of enhancing metropolitan areas' basic infrastructure, including housing for the underprivileged and homeless.¹⁶ The Rajiv Awas Yojana (RAY) programme was introduced in 2011 with the goal of rehabilitating slums and giving the urban poor access to affordable

¹² Amitabh Kundu, Arjun Kumar, Housing for the Urban Poor? Change in Credit -linked Subsidy, 'Economic and Political Weekly', Vol.52, Issue No. 52, 30 Dec, 2017. Available at: https://www.epw.in/journal/2017/52/notes/housing-urban-poor.html?0=ip_login_no_cache%3D5616b32ec0c2a162451fc1b3a50495d5

¹³ Supra note 10.

¹⁴ Zee News, 'Modi Govt changes Indira Awaas Yojana's name' *Zee News* (New Delhi, 25 April 2016). Available at: https://zeenews.india.com/news/india/modi-govt-changes-indira-awaas-yojanas-name-its-now-pradhan-mantri-gramin-awaas-yojana_1879458.html

¹⁵ Ministry of Housing and Urban Affairs, 'PMAY(U): About' (*MoHUA*) <<https://pmay-urban.gov.in/about>> accessed 19 April 2023.

¹⁶ Kala Seetharam Sridhar, 'JNNURM: Largest Urban renewal programme comes with stings, but succeeding in place', *The Economic Times*, March 17, 2014. Available at: <https://economictimes.indiatimes.com/opinion/et-commentary/jnnurm-largest-urban-renewal-programme-comes-with-strings-but-succeeding-in-places/articleshow/32176241.cms?from=mdr>

homes.¹⁷ The programme offered governments and cities financial support for the building of homes for slum inhabitants and low-income people. Despite having various schemes implemented by the government on a time to time basis, the condition or the situation of the urban poor and slum dweller remains an inevitable and unsolved issue. These schemes or initiatives have different shortcomings because of which they are not that much effective as they are envisioned such as The implementation of PMAY has been slow, with only a fraction of the targeted beneficiaries receiving the benefits of the scheme. The availability of land is a major challenge in implementing PMAY, particularly in urban areas.

It is evident right once that the housing shortage is specific. It is concentrated in one area of the population with a particular income bracket, which accounts for practically all of it. As a result, there is a substantial correlation between housing affordability and income poverty, suggesting yet another geography of vulnerability. The Kundu Committee Report's key argument is that individuals who live in what they characterise as "housing poverty" are primarily responsible for India's housing deficit. These are families who either reside in unsuitable housing or in what we can refer to as "unacceptable physical and social conditions." These are depicted in their study as outdated or crowded homes. The former alludes to material dilapidation, whilst the latter is used to describe several families that are compelled to reside in a single dwelling unit.¹⁸ Instead of the complete lack of housing, housing poverty is the primary cause of the current housing crisis. It's also crucial to note that only 5% of the current housing stock is considered to be "non-serviceable." India's housing shortfall is not a result of vast people without shelter but rather of existing, frequently self-built, "affordable housing that is inadequate." There are two key points to take away from this: (a) the majority of people who experience housing poverty also experience economic poverty; and (b) the majority of people experiencing housing poverty do not experience homelessness but rather live in substandard existing or self-built dwellings like what we have noticed in the Bharat Vihar, Dwarka Sector 14, New Delhi from where we have clicked the photos.

¹⁷ Rajiv Awas Yojana (RAY): Scheme Guidelines 2013-2022 & Training Model in Ray available at: <https://smartnet.niua.org/content/69cdbbff-68d9-46f9-8a48-a8afc9af6325>

¹⁸ "LOCATING THE DEBATE Poverty and Vulnerability in Urban India ", INDIAN INSTITUTION FOR HUMAN SETTLEMENTS. Published in Bangalore, 2014. Pg no. 36-44. Available at: https://iihs.co.in/knowledge-gateway/wp-content/uploads/2015/07/IIHS-RF_Poverty_Edited-changes-accepted_Reduced-size.pdf

JUDICIAL VIEW ON RIGHT TO HOUSING

In India, the Constitution, as well as case laws, guarantee the right to housing. Nevertheless, millions of people continue to live in slums without access to necessities like electricity, water, or sanitary facilities, despite the legal framework.

The Right to Life guaranteed by Article 21 of the Indian Constitution implicitly includes the right to housing. In the landmark decision of *Olga Tellis v. Bombay Municipal Corporation* (1985)¹⁹, the Supreme Court ruled that the right to an acceptable standard of living, which includes the right to housing, is a part of the right to livelihood. The case primarily defined the slum inhabitants' right to housing through two important safeguards: a chance for rehabilitation under existing programmes for the eviction, as well as a right to notice and a hearing before evictions. But over time, it has been discovered that these two crucial checks are too rigidly defined and don't offer the residents any real respite.

In a decision similar to this one, *K Chandru v. State of Tamil Nadu*²⁰ upheld the same right to shelter while laying out more specific requirements for the government with regard to humane eviction and resettlement. The Court specifically instructed the government to provide "reasonable alternative housing" to the urban poor who were left homeless. The court further states that the right to livelihood is a fundamental right, although there are still some operational issues. The Court has defined the fundamental right to housing as a "conditional right" rather than a "systemic right."

The complex history of the Indian court in regard to the housing and livelihood requirements of the urban poor reflects the dual capacity of law as a historical force that may both shed and constrain. By encouraging social conformity that supports the dominant group's goal, judges contribute to the establishment of the supremacy of the prevailing social forces. The judiciary has prioritised the illegality of the occupation of land by peddlers or pavement dwellers over the constitutionality of the evictions, despite the fact that there have been a number of cases in which courts have rejected the recognition of the right to livelihood as a fundamental right and the judiciary's efforts to provide a protection to it just for maintaining the order of Public at large.

¹⁹ (1985) 3 SCC 545.

²⁰ (1985) 3 SCC 536.

The Delhi High Court required the state to meet the following requirements in *Sudama Singh v. Govt. of Delhi*²¹: i. Conduct a survey of all individuals facing eviction to determine whether they qualify for rehabilitation under current programmes, and ii. Conduct a rehabilitation exercise "in consultation with each of them [individuals facing eviction] in a meaningful manner." Holders of rights have corresponding entitlements and state pertaining obligations in accordance with Article 21 of the Constitution. But in the same case further states that "the right to life under Article 21 of the Constitution does not mean the right to encroach upon public property or land belonging to the Government or local authorities" and even "right to life" guaranteed by Article 21 of the Indian Constitution²² includes the right to a living, but pavement dwellers and hawkers are infringing on public property and must be removed.

The Supreme Court noted in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*²³ that the state must provide the right to housing for anybody living on public property due to poverty. The court noted that if a certain slum has been present in a specific location for a long time, the state is obligated to solve the residents' housing concerns. The court's ruling ignored the fact that the right to subsistence is a collective one and instead concentrated on the illegality of slum residents' occupancy of land. The court's reasoning ignored the value of organisation and collective bargaining in defending the rights of the urban poor.

In a number of judgments, the supreme court of the nation has ruled that in addition to the right to housing, there are some other additional basic rights such as the right to a clean environment, access to clean water, and good sanitation are also essential for having a better living condition. The Supreme Court of India ruled in *Chameli Singh v. State of U.P.* (1996)²⁴ that the right to clean and safe drinking water is part of the Right to Life under Article 21 of the Indian Constitution. The court ruled that access to water is a basic requirement for human existence and that depriving someone of it might constitute a breach of their right to life. The court further held that it is the duty of the government to ensure that citizens have access to clean and safe drinking water.

The Supreme Court of India ruled in *Rural Litigation and Entitlement Kendra v. State of U.P.*

²¹ *Sudama Singh v. Govt. of Delhi*, 2010 SCC OnLine Del 612

²² Article 21 of the Indian Constitution

²³ *Ahmedabad Municipal Corpn. v. Nawab Khan Gulab Khan*, (1997) 11 SCC 121

²⁴ 1995 Supp(6) SCR 827

(1985)²⁵ that the right to a healthy environment is a crucial component of the right to life protected by Article 21 of the Indian Constitution. The photos taken at least suggests that the local municipal body completely disregards this civic duty and obligation of disposal of garbage collected and shows the inefficiency of the government body in the proper management of waste.

CONCLUSION

Instead of the hopes that formerly drew the majority of India's urban poor to these urban cities, their eyes are now mostly filled with dust and misery. While many of those moving to urban areas do so in pursuit of employment and higher standards of living, millions wind up living in slums, which might worsen their living conditions. The Right to Life guaranteed by Article 21 of the Indian Constitution implicitly includes the right to housing. The Supreme Court ruled that the right to an acceptable standard of living, which includes the right to housing, is a part of the right to livelihood. Urban poverty and illegality are major problems for legislators and academics equally in many developing countries at the moment. Although the problem seems to be getting worse, the state and the judiciary may still play a crucial role in defending the rights of the urban poor and improving their lives. Before India descends into a nation of urban poor, the government and other organisations must provide more pertinent frameworks for development for the urban poor.

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²⁵ 1989 Supp (1) SCC 504.