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Land insecurity and barriers to the realisation of the fundamental right to water and sanitation.

The tale of two slums in Delhi.

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Abstract

In the wake of its independence, India has witnessed a tremendous growth in its urban population. Some of the challenges that came along with this rapid urbanization are still to be addressed in the world's largest democracy. The sprawling growth of slums indeed outpaced the process of urbanization itself, and these sub-standard human settlements are still very much a feature of Indian megacities today. To apprehend the complex reality of slums, a starting point is to grasp the dynamics of land insecurity in those areas. Further understanding the interplay between this land insecurity and accessibility to basic urban services, such as water and sanitation, can then prove a very fruitful exercise as both are constitutive elements of the notion of a "slum" and the relationship between them has rarely been thoroughly explored. In this sense, the focal point of this thesis research is to explore the possible linkage between land-related issues and the level of realisation of the human rights to water and sanitation. As an interesting illustration of the unequal coverage of basic water and sanitation amenities at the expense of the most vulnerable fringe of the urban society, the Indian capital of Delhi will constitute our case study.

Table of content

List of abbreviations

AAP	Aam Aadmi Party
BSUP	Basic Services for the Urban Poor
CESCR	Committee for Economic and Social Rights
CPHEEO	Central Public Health and Environment Engineering Organisation
CURE	Centre for Urban and Regional Excellence
DDA	Delhi Development Agency
DJB	Delhi Jal Board
DNSP	Draft National Slum Policy
DUSIB	Delhi Urban Shelter Improvement Board
EIUS	Environmental Improvement of Urban Slums
EWS	Economical Weak Section
GNCTD	Government of the National Capital Territory of Delhi
GoI	Government of India
HLRN	Housing and Land Rights Network
ICESCR	International Convention for Economic and Social Rights
ICCPR	International Convention for Civil and Political Rights
JJ cluster	Jhuggi Jhompri cluster
JNNURM	Jawaharlal Nehru National Urban Renewal Mission
LIG	Low Income Group
LOA	Land Owning Agency
lpcd	Litre/capita/day
MCD	Municipal Corporation of Delhi
MDG	Millenium Development Goals
MoUDPA	Ministry of Urban Development and Poverty Alleviation
NCTD	National Capital Territory of Delhi
NHRC	National Human Right Commission
NLU	National Law University
PIL	Public Interest Litigation
RAH	Right for Adequate Housing
RAY	Rajiv Awas Yojana
RTTC	Right To The City

RTS	Right To Sanitation
RTWS	Right To Water and Sanitation
RWA	Resident Welfare Association
SBM	Swachh Bharat Mission
SDG	Sustainable Development Goals
SG	Savda Ghevra
SR	Special Rapporteur
UDHR	Universal Declaration for Human Rights
ULB	Urban Local Bodies

General introduction

> *"The cities of the future, rather than being made out of glass and steel as envisioned by earlier generations of urbanists, are instead largely constructed out of crude brick, straw, recycled plastic, cement blocks, and scrap wood. Instead of cities of light soaring toward heaven, much of the twenty-first-century urban world squats in squalor, surrounded by pollution, excrement, and decay"*[1].

While it is dubious which "city of the future" Mike Davis is referring to exactly, we can hold for certain that the squalid conditions depicted are no other than the ones in the slums that have burgeoned in the Global South's urban landscape today. If we were to venture hazardous comparisons, we could state that the biblical chaos of mankind in the Tower of Babel was nothing compared to current state of disarray in those precarious settlements in which men and women struggle for daily survival.

The world has not remained indifferent in the face of this significant human suffering. Driven by good intentions and a determination to succeed, UN member States adopted the Millennium Development Goals (MDGs) in 2000, which set out seven quantitative targets with a view to ending extreme poverty by 2015[2]. Target 11 – under Goal 7 "Ensure Environmental Sustainability" – strives for significantly improving, by 2020, the lives of at least 100 million slum dwellers. "Slum households" are defined by UN Habitat as a "group of individuals living under the same roof that fulfils one or more of the [following] conditions: (i) insecure residential status, (ii) *inadequate access to safe water*, (iii) *inadequate access to sanitation* and other infrastructures, (iv) poor structural quality of housing, (v) overcrowding"[3]. Target 11 is thus closely linked with Target 10 which aims at halving, by 2015, the proportion of people

[1] M. Davis, 2006, p. 19.

[2] Building upon the MDGs, the Sustainable Development Goals (SDGs) are in the process of being defined by the UN General Assembly during its 68th session in September 2015. Goal 6 of the SDGs specifically aims at ensuring the availability and sustainable management of water and sanitation for all (Open Working Group Proposal for Sustainable Development Goals, 2014).

[3] UN Habitat, 2003.

without sustainable access to safe drinking water and basic sanitation. India, signatory of the Millennium Declaration, is still lagging behind on the abovementioned targets.

In the wake of its independence, India has witnessed a tremendous growth in its urban population. From 1951 to 2001, decadal urban growth ranged between 20 and 30%[4]. From 2001 to 2011, the urban population grew by 31,80%[5]. As per the 2011 Census, India's urban population amounted to 377.105.760, constituting 31,16% of the total Indian population. Besides *in situ* population growth, this surge is mainly due to economically motivated internal migration to urban areas from rural hinterlands and the absorption of villages into cities[6]. Projections for 2030 place the urban population at about 590 million to 600 million[7].

The Government of India (GoI) has failed to keep pace with this exceptional urban growth. Weak land regulation, exclusionary urban planning and lack of affordable housing stock have led to the "mushrooming" of slums and squatter settlements inside and at the periphery of metropolitan cities. Urban poor living in those settlements rely on informal housing systems characterised by limited access to basic amenities. As per the 2011 Census, 13.920.191 households were living in slums, this is 65.494.604 people, which represents approximately 17,4% of the total urban population[8]. The sprawling growth of slums in Indian megacities has seemingly outpaced the process of urbanization itself.

Slums – as the most visible face of poverty in urban India – are living museums of human rights violations. Overcrowding and an acute shortage of basic amenities such as water, sanitation, sewerage and drainage, paved roads, street lighting etc. create very poor living conditions. Pursuing city beautification goals, the construction of flyovers or road widening, to name but a few, municipalities have engaged in large-scale slum demolitions, evictions and resettlement at times. In such a context, the freedom from want for basic essentials remains a distant dream for the slum dweller.

[4] Census India 1961, 1971, 1981, 1991, 2001.

[5] Census India 2011.

[6] GoI, December 2012, p. 16

[7] Sh. Sankhe *et al.*, 2010, p. 13.

[8] Census India 2011.

The relation between urban growth, poverty and access to basic services is a complex one. On the one hand, massive urban growth has put existing infrastructures under unprecedented pressure and steadily decreased chances of universal access to city dwellers. On the other hand, the lack of affordable housing stock has forced the poorest fringes of the urban population to enter the informal land and housing market, which delivers sub-standard housing and settlements deficient in basic amenities, such as drinking water and sanitation facilities. Within the purview of this investigation we will endeavour to grasp the dynamics of land insecurity in urban areas and their interplay with access to basic services, water and sanitation in particular. Put otherwise, the aim of the study is to analyse barriers to the realisation of the right to water and sanitation due to issues of land insecurity. A human-rights based approach is thus endorsed to address the challenges of urbanisation where the realisation of the right to water and sanitation is framed as an end in itself.

In this research we have opted for a broad understanding of land insecurity. This term not only refers to the lack of tenure security, i.e. protection against threats and unlawful evictions[9], but also to other land-related issues, such as the legal status of the land, the inclusion of an area within the urban planning of a city, reliance on the informal housing market, the location of a site and its distance from livelihood sources.

Though there is diverse literature explaining the hurdle to access to basic services caused by tenure insecurity, there are very few empirical studies that examine the relationship between land insecurity and the realisation of the right to water and sanitation. This research therefore attempts to understand the degree of land insecurity in different types of urban settlements, and the related degree of the realisation of the human rights in question to analyse patterns that may emerge. To that end, two informal settlements of the Indian capital of Delhi will be used as case studies. One is a resettlement colony composed of households previously evicted from different parts of the city (Savda Ghevra); the other is a settlement build upon public land – and hence illegal (Safeda basti).

While tenurial insecurity and deficient water and sanitation facilities are both constitutive elements of the definition of a "slum" at the international and national level, it is unclear whether those elements are related. Our initial hypothesis is that land-related issues and basic

[9] A. Durand-Lasserve, 2006, p. 2.

services, such as water and sanitation facilities, are linked to the extent that the former limits full access to the latter in urban poor areas. If the existence of such a link can be asserted, the question here is whether the linkage between land-related issues and access to basic services enables the State to realize the right to water and sanitation to the maximum of its available resources?

This research comprises three parts. Title I is devoted to the analysis of the conceptual framework on the various human rights at stake, i.e. adequate housing, water and sanitation, from an international perspective. Title II then examines the normative framework on the same issues at the domestic Indian level. A cross-cutting issue in these two parts is to understand the link, both at the international and national level, between land insecurity and access to potable water and sanitation facilities. Once the stage is set, the two specific slums will be thoroughly examined in Title III.

Title I: Conceptual framework at the international level

The purpose of the Title I is to analyse the connection between adequate housing, water and sanitation requirements from an international human rights perspective. Chapter 1 starts with an analysis of the international right to water and sanitation, while Chapter 2 provides the same investigation of the right to adequate shelter. Finally, in the concluding Chapter we will provide the reader with an assessment of what the preceding chapters reveal, in terms of linkage between land tenure issues and access to basic amenities for water and sanitation.

CHAPTER I: RIGHT TO WATER AND SANITATION

a. Emergence of the international human right to water and sanitation

Water is a basic human need and one of the very first conditions for survival. This alone did not bring recognition of access to water as a fully-fledged human right by the international community. It is, indeed, an understatement to say that the Right To Water and Sanitation (RTWS) struggled to establish itself as a basic right within the international human rights framework. The process of international recognition of the RTWS is one that is still unfolding today, and therefore the right in question seems to keep its "ambiguous status within international law"[10]. Within the limits of this research, we will not endeavour to solve the question of the legal status of the RTWS at the international level[11], we will nevertheless provide the reader with the key elements for understanding the development of the global normative framework on water and sanitation.

The RTWS bears very little formal recognition within the legally binding norms of international law[12]. With regard to human rights treaties, the aforementioned right is explicitly recognized as a basic right in the context of the protection of specific vulnerable groups, such

[10] A. Cahill-Ripley, 2011, p. 52.

[11] There exists abundant literature devoted to the topic. See, *inter alia,* J. Scanlon *et al*., 2004; A. Cahill-Ripley, 2005, pp. 389-410; A.]. Kirschner, 2011, pp. 445-487; S. De Vido, 2012, pp. 518-564.

[12] The question whether the RTWS is part of customary international law or of the general principles of international law will not be examined here. See further: S. De Vido, 2012, pp. 531-549; Inga T. Winkler, 2012, pp. 65-99.

as women living in rural areas[13], children[14] and persons with disabilities[15]. The RTWS is unfortunately not explicitly enshrined in any of the documents composing the International Bill of Rights[16]. The Committee for Economic, Social and Cultural Rights (CESCR), authoritative interpreter of the International Covenant on Economic, Social and Cultural Rights (ICESCR), nevertheless derived the RTWS from article 11(1) of the Covenant, as a fundamental guarantee for securing an adequate standard of living. The Committee also underlined the inextricable link between the RTWS and the basic right to health laid down in article 12 of the ICESCR[17]. In addition, the Human Rights Committee and scholars have argued that the RTWS can also be deduced from the broad understanding of the "right to life" under article 6 of the International Covenant for Civil and Political Rights (ICCPR)[18].

Aside from explicit or implicit recognition in human rights treaties, the RTWS enjoys political importance in soft law acts. Since the 1970s, a high number of resolutions, declarations and statements on the right in question have been adopted[19]. The most important and recent ones are the 2010 General Assembly and Human Rights Council resolutions expressly declaring

[13] Article 14(2) of the Convention on the Elimination of All Forms of Discrimination against Women.

[14] Article 24 & 27(3) of the Convention on the Rights of the Child.

[15] Article 28 of the Convention on the Rights of Persons with Disabilities.

[16] The International Bill of Rights is composed of the three basic UN human rights instruments, namely the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) (F. Gomez Isa, 2009, p. 38).

[17] CESCR, General Comment n° 15 – Right to Water, para. 4.

[18] In its General Comment n° 6, the Human Rights Committee (HRC) explained that Article 6 must be broadly interpreted to encompass everything that is necessary to ensure a life with dignity (HRC, General Comment n° 6 – Right to Life, 1982, para. 5). For scholars who claim that water is necessarily one of the elements of a dignified life under Article 6 of the ICCPR, see A.]. Kirschner, 2011, p. 460; S. De Vido, 2012, p. 523. Inga T. Winkler points out that access to water guaranteed under the right to life only ensure respect for the bare minimum of the former (Inga T. Winkler, 2012, pp. 54-55).

[19] See, *inter alia*, the Declaration of the United Nations Conference on the Human Environment, Stockholm, A/CONF.48/14/Rev.1, 16 June 1972; United Nations Water Conference, Mar del Plata, E/CONF.70/29, March 1977; Rio Declaration on Environment and Development, Rio de Janeiro, A/CONF.151/26, June 1992, ("Agenda 21"); International Conference on Population and Development, Doc. A/CONE171/13/Rev.1, September 1994, ("Cairo Declaration").

RTWS as an international human right[20]. Those resolutions have been politically significant for the materialization of the RTWS on the international scene[21], and therefore the year 2010 is considered "the most momentous year to date for authoritative confirmation of a human right to water and sanitation"[22].

In light of the foregoing developments we can safely assert that, derived from a combination of various legal sources, a RTWS has emerged in the international sphere. As a minimum, States Parties to the ICESCR are obliged to progressively realise this right[23], in order to secure an adequate standard of living and the highest attainable standard of health to right-holders falling under their jurisdiction.

One last issue that needs to be addressed is the link between water and sanitation. Sanitation can be defined as a "system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene"[24].

As previous developments demonstrate, issues of water and sanitation are often conceptualized together. This linkage is traditionally to be explained by the risk of water contamination by human excreta when individuals have to resort to open defecation[25]. Also, the "disease-spreading potential of feces" negatively impacts the attainment of the highest standard of health enshrined in article 12 of the ICESCR[26]. The interlinked nature of the issues of water, sanitation and health brings about a lot of overlap and is a compelling argument for their simultaneous analysis. Nevertheless, it is necessary to underline the significance of a self-standing Right to Sanitation (RTS).

[20] Resolution adopted by the General Assembly on 28 July 2010, A/RES/64/292 & Resolution adopted by the Human Rights Council on 6 October 2010, A/HRC/RES/15/9.

[21] Inga T. Winkler, 2012, p. 80.

[22] N. Chowdhury *et. al.*, 2011, p. 3.

[23] The obligation to progressively realise the rights, using the maximum available resources, is the underlying principle of the ICESCR contained in Article 2(1).

[24] HRC, A/HRC/12/24, July 2009, para. 63. The CESCR took over this broad definition in its "Statement on the right to sanitation", E/C.12/2010/1, March 2011, para. 8.

[25] HRC, A/HRC/12/24, July 2009, para. 33.

[26] Ellis & L. Feris, 2014, p. 615.

First, it is worth noting that the MDGs addressed water and sanitation as two separate issues. The Special Rapporteur (SR) on the human right to safe drinking water and sanitation (C. De Albuquerque) also clearly supports the emergence of an independent RTS[27]. The CESCR eventually recognized that "it is significant (…) that sanitation has distinct features which warrant its separate treatment from water in some respects. Although much of the world relies on waterborne sanitation, increasingly sanitation solutions which do not use water are being promoted and encouraged"[28]. It is clear that in the case of on-site sanitation facilities that do not require water (such as pit latrines), the right to water offers no corresponding protection from a human rights perspective. Although other very valuable arguments in favour of delinking have been put forward[29], one can hardly argue that they are widely received and accepted within the international community. As things stand, it appears wiser to keep sanitation within the ambit of the right to water and prevent it from "falling off the radar"[30]. Moreover, we will see that both rights share the same standards at the international level, as SR C. De Albuquerque has transposed and adapted the norms pertaining to the right to water to the context of sanitation (*Cfr. Infra*). For the reasons spelled out above, we will consider the right to water and sanitation as one single right, while keeping in mind their fundamental differences in practice.

b. Content of the right to water and sanitation

Having explored the foundations for a human right to water and sanitation at the international level, this section will delineate its normative content, standards and scope. Before delving into the substantial analysis of this chapter, the central principle of equality and non-discrimination will be examined.

[27] She recently argued that there are "infringements on the very core of human dignity that are not wholly captured by considering sanitation only as it relates to other human rights", and therefore, "[sanitation] should be considered a distinct human right" (HRC, A/HRC/12/24, July 2009, para. 55 & 58).

[28] CESCR, "Statement on the right to sanitation", E/C.12/2010/1, March 2011, para. 7.

[29] Scholars have voiced the need for delinking sanitation from water in the international legal framework: K. Ellis & L. Feris, 2014, pp. 607-629.

[30] K. Ellis & L. Feris, 2014, p. 626.

1) Principle of equality and non-discrimination

From the outset, the ICESCR upholds equality and non-discrimination as an overarching principle that needs to be ensured with regard to every right that it outlines[31]. This "cross-cutting obligation" of the State to guarantee formal and substantive equality is of immediate effect[32], and hence, not subject to progressive realisation[33].

> *The notion of **"informal/ irregular settlements"** is defined negatively as an absence of inclusion within the formal land and housing sector; it is an end result of legal, political and economic exclusion mechanisms (A. Durand Lasserve, 2013). As informality has a much broader scope of application, it cannot be equated with illegality. We will avoid throughout this research to use the negatively connoted language of illegality.*

Article 2(2) of the ICESCR suggests that the list of prohibited grounds for discrimination is non-exhaustive, as it refers *in fine* to "other status". An illustration of the latter is the prohibition of discrimination based on "place of residence"[34]. In this respect, the State has to ensure that the "exercise of a Covenant right [is not] conditional on, or determined by, a person's current or former place of residence; e.g. whether an individual lives or is registered in an urban or a rural area [or] in a formal or an informal settlement, (…)". The CESCR further specifies that "no household should be denied the right to water on the grounds of their housing or land status"[35]-[36]. Confirming the views of the CESCR, the SR C. De Albuquerque adds that "due to

[31] Article 2(2) of the ICESCR.

[32] CESCR, General Comment n° 20 – Non discrimination principle, 2009, para. 7-8.

[33] The State obligation to ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups, is one of the "core obligations" outlined in General Comment n° 15 on the Right to Water (Para. 37(b)).

[34] For examples of "other status" introduced by the CESCR, see: General Comment n° 20, 2009, para. 27-35.

[35] *Ibidem*, para. 34.

[36] This principle was already included in the "Draft guidelines for the realization of the right to drinking water supply and sanitation" presented by the Special Rapporteur Mr. El Hadji Guisse to the Human Rights Commission on 11 July 2005 (E/CN.4/Sub.2/2005/25, para. 5.4).

the lack of secure tenure, municipalities deny informal settlements adequate services for the fear of legitimising a settlement"[37]. All in all, the legal status of the land and informal character of a settlement in urban areas is key, as it too often impedes on the full realisation of the right to water and sanitation.

2) Availability

The availability criterion entails that, depending on the purposes for which water is used, water supply for each person must be sufficient and continuous. These uses encompass those necessary to guarantee an adequate standard of living, such as "drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene"[38]. The "continuous" element of availability pertains to the regularity of the water supply[39]. As a component of the right to water, there must be a sufficient number of sanitation facilities within a certain area to avoid overcrowding and waiting times[40].

The CESCR does not directly include a specific amount of water to be secured, but refers to the guidelines of the World Health Organisation (WHO) in this regard[41]. Based on the table below, we consider 20 litre/capita/day (lpcd) of safe water to be the "minimum essential amount of water" of the core content of the right to water[42]-[43]. It should be noted however that the minimum amount required varies according to the context, in order to take into account the specific needs of every individual[44]. Enjoyment of the highest standard of health might only be secured with a minimum of 50 lpcd of water supply. Lastly, 100 lpcd of water is the optimal access that one can enjoy. It is worth flagging that those norms are not dependent nor on the type of water supply system neither on the sanitation facilities installed within the household or the community.

[37] *Realising the human right to water and sanitation: A handbook,* Booklet 7: Principles, October 2014, p. 23.

[38] CESCR, General Comment n°15, para. 12(a).

[39] CESCR, General Comment n°15, footnote n° 12.

[40] HRC, A/HRC/12/24, July 2009, para. 70.

[41] J. Bartram & G. Howard, 2002 and P.H. Gleick, 1996, pp. 83-92 (CESCR, General Comment n°15, footnote n° 15).

[42] CESCR, General Comment n° 15, para. 37(a).

[43] Comparatively, the South African Free Basic Water Policy considers 25l lpcd to be the minimum that has to be provided to everyone.

[44] CESCR, General Comment n° 15, para. 37(a) *in fine.*

Table S1: Summary of requirement for water service level to promote health

Service level	Access measure	*Needs met*	Level of health concern
No access (quantity collected often below 5 l/c/d)	More than 1000m or 30 minutes total collection time	Consumption – cannot be assured Hygiene – not possible (unless practised at source)	Very high
Basic access (average quantity unlikely to exceed 20 l/c/d)	Between 100 and 1000m or 5 to 30 minutes total collection time	Consumption – should be assured Hygiene – handwashing and basic food hygiene possible; laundry/ bathing difficult to assure unless carried out at source	High
Intermediate access (average quantity about 50 l/c/d)	Water delivered through one tap on-plot (or within 100m or 5 minutes total collection time	Consumption – assured Hygiene – all basic personal and food hygiene assured; laundry and bathing should also be assured	Low
Optimal access (average quantity 100 l/c/d and above)	Water supplied through multiple taps continuously	Consumption – all needs met Hygiene – all needs should be met	Very low

(Source: J. Bartram & G. Howard, 2002, p. 22)

3) Quality

Importantly, the water used – for whatever purpose – must be safe. This means that it must be free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health[45]. One must refer to the WHO "Guidelines for Drinking Water Quality" for the standards set with regard to drinking water safety[46].

Sanitation facilities must hygienically safe to use. This means that the infrastructure must effectively prevent human, animal and insect contact with human excreta; ensure access to safe water for hand washing as well as menstrual hygiene; take into account the need of persons with disabilities and children; and be regularly cleaned and maintained[47].

4) Accessibility

The requirement for water and sanitation to be accessible presents different dimensions: a physical and an economic one.

[45] CESCR, General Comment n° 15, para. 12(b).

[46] WHO, 1993.

[47] HRC, A/HRC/12/24, July 2009, para. 72-74.

The physical accessibility of water implies that sufficient, safe and acceptable water must be within physical reach of everyone, i.e. in the immediate vicinity of each household, educational institution and workplace[48]. This is linked to concerns of water quality[49], but also to threats to the physical security of the water bearers, mainly women and girls[50]. This requirement equally applies to sanitation facilities[51].

Economic accessibility entails that water and access to sanitation facilities must be affordable for all. This means that the direct and indirect costs incurred for those basic amenities must not limit people's capacity to pay for other services, and ultimately hinder the realisation of other rights under the ICESCR[52]. In this regard, the CESCR rules out arbitrary or unjustified disconnection or exclusion from water services or facilities[53].

[48] CESCR, General Comment n° 15, para. 12(c).

[49] Studies have shown that the distance to the water source has a strong negative impact on the quality of the water collected (G. Howard and J. Bartram, 2003; Inga T. Winkler, 2012, p.135).

[50] CESCR, General Comment n° 15, para. 12(c). See also the acknowledgment in the General Comment of the "disproportionate burden women bear in the collection of water" (para. 16(a)).

[51] HRC, A/HRC/12/24, July 2009, para. 75.

[52] CESCR, General Comment n°15, para. 12(c).

[53] CESCR, General Comment n°15, para. 44(a).

CHAPTER II: RIGHT TO ADEQUATE HOUSING

a. International right to adequate housing

The starting point for the examination of the right to adequate housing at the international level is article 25 of the 1948 Universal Declaration of Human Rights (UDHR). Building upon the "freedom from want" stated in the Preamble, the right to housing is established in the UDHR as one component of the holistic right to an adequate standard of living[54]. The ICESCR adopted in 1966 further upheld the importance of the right at the international level. Reflecting the structure of article 25 of the UDHR, article 11 of the ICESCR states that:

> "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and *housing*, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent"[55].

The right to adequate housing is thus firmly affirmed in two out of three International Bill of Rights documents[56]. Other subject-specific international covenants also explicitly include the right in question[57]. Finally, numerous international declarations endorse a human rights-based approach to housing needs that involves States' duties and responsibilities[58]. In light of the foregoing, we can conclude with certainty that the right to adequate housing is a basic human right recognised at the international level.

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[54] J. Hohmann, 2014, pp. 15-16.

[55] Our own emphasis.

[56] Although Articles 17 and 26 of the ICCPR provide for protection against discriminative and/or arbitrary interferences with a person's housing, the Covenant contains no explicit right to adequate housing. (For further developments see: J. Hohmann, 2014, pp. 33-35).

[57] Article 5 of the International Covenant on the Elimination of All Forms of Racial Discrimination; Article 14.2 of the International Convention on the Elimination of All Forms of Discrimination Against Women; Articles 16 & 27 of the Convention on the Rights of the Child; Article 43.1.d of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

[58] See the first and second UN Conferences on Human Settlement and the adoption of the Vancouver Declaration in 1976, the Istanbul Declaration and Habitat Agenda in 1996 (available at: http://ww2.unhabitat.org/declarations). These documents are indeed built upon strong human rights foundations (M. Kothari, 2001, p. 37).

b. Substance of the right to adequate housing

This section is devoted to understanding the precise content of the international right to adequate housing. For this purpose, we will first provide the reader with the definition of the basic right and examine the various elements constituting it[59], to end with a brief discussion about the emerging concept of "right to the city".

1) Definition of the right to adequate housing

The Right to Adequate Housing (RAH) must be broadly understood as the "right to live somewhere in security, peace and dignity". In this sense, the right encompasses much more than a "shelter provided by merely having a roof over one's head"[60]. Following the approach endorsed in the Global Strategy for Shelter to the Year 2000, the CESCR further states that "adequate shelter means … adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost". Various conditions have thus to be fulfilled for the housing to be considered as "adequate" under article 11(1) of the ICESCR.

2) Legal security of tenure

The cornerstone of the right to adequate housing is the enjoyment of legal security of tenure[61]. Both the international human rights and the international human settlements communities have increasingly devoted attention to this issue in the last two decades[62].

Tenure security is usually defined as a "set of relationships with respect to housing and land (…) that enables one to live in one's home in security, peace and dignity"[63]. The CESCR explains that "notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other

[59] The structure of this section is for the most part based on the constitutive elements of the fundamental right to housing developed in General Comment n° 4 of the CESCR. For the sake of concision, the last aspect of cultural adequacy will be kept out of our analysis.

[60] CESCR, General Comment n° 4 – Right to Adequate Housing, 1991, para. 7.

[61] OHCHR, Factsheet n° 21 – Right to Adequate Housing, p. 8.

[62] See for the former: Global Strategy for Shelter to the Year 2000 and the Guiding Principles on Security of Tenure for the Urban Poor issued by the Special Rapporteur on Adequate Housing (*Cfr. Infra*). For the latter: Istanbul Declaration on Human Settlements of 1996 and the New Delhi Declaration of 1996, outcome of the UN Habitat II Conference.

[63] HRC, A/HRC/25/54, 30 December 2013. para. 3.

threats"[64]. In other words, the higher the degree of tenure security, the lower the chances that threats and acts of forced eviction to take place.

Security of tenure is closely linked with the occurrence of forced evictions. The notion of "forced eviction" itself is understood by the CESCR as a "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"[65]. Aside from being a *prima facie* violation of the right to adequate housing[66], forced eviction potentially constitutes a gross violation of a range of other related basic rights, such as food, water, health, education, work, freedom from cruel, inhuman and degrading treatment, and freedom of movement[67]. In the urban context, the former Special Rapporteur on the RAH, M. Kothari, stresses that "forced evictions intensify inequality, social conflict, segregation and "ghettoization", and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society (…)"[68].

The "Basic principles and guidelines on Development-based evictions and Displacement" report published by the Special Rapporteur (SR) provides an excellent framework of protection against forcible evictions both in the urban and rural context. Central to the protection against forced evictions is that the persons affected cannot find themselves worse off than before any removal from the original dwelling occurred. Therefore, the State must ensure that all the resettlement measures, such as the provision of water and sanitation, the allocation of land and sites, electricity and schools are completed before any step toward eviction takes place[69].

As tenure security constitutes a primordial safeguard against forcible evictions, States should take immediate measures conferring legal security of tenure upon those persons and households currently lacking such protection[70]. In its "Guiding Principles on Security of Tenure

[64] CESCR, General Comment n° 4, 1991, para. 8(a).

[65] CESCR, General Comment n° 7 on the Right to Adequate Housing – Forced Eviction, 1997, para. 3.

[66] CESCR, General Comment n° 7, 1997, para. 1 & 4.

[67] Special Rapporteur on Adequate Housing, "Basic principles and guidelines on development-based evictions and displacement", A/HRC/4/18, December 2006, para. 6.

[68] *Ibidem,* para. 7.

[69] *Ibidem,* para. 44.

[70] CESCR, General Comment n° 4, 1991, para. 8(a).

for the Urban Poor"[71], the former Special Rapporteur (SR) on RAH, R. Rolnik, addresses specifically tenure insecurity in urban and peri-urban areas. It is important to note at the outset that the basic principle underpinning those Guiding Principles is the presumption that individuals and communities occupying land or property to fulfill their right to adequate housing because of the lack of any alternative solution, have legitimate tenure rights that should be secured and protected[72].

The Report first recognizes the diversity of tenure forms and the need to strengthen them equally[73]. Derived from customary, religious, statutory or hybrid tenure systems, the different tenure arrangements mainly vary between possession rights[74], use rights[75], rental[76], freehold[77] or collective arrangements[78]. All those tenure forms should be protected and promoted on an equal footing, as appropriate in the given urban and peri-urban context.

The SR endorses the principle of securing tenure *in situ,* instead of operating eviction and resettlement of the inhabitants in question[79]. This principle is, however, not absolute. Legitimate circumstances – such as the protection of the health and safety of inhabitants exposed to environmental hazards or the preservation of critical environmental resources – can justify State intervention to evict and resettle, in accordance with international human rights standards (*Cfr. Supra*).

[71] Special Rapporteur on Adequate Housing, "Guiding Principles on Security of Tenure for the Urban Poor", A/HRC/25/54, 30 December 2013.

[72] *Ibidem,* para. 5.

[73] *Ibidem,* para. 5, 1st Guiding Principle.

[74] Possession rights entail the legal recognition of the rights of those occupying public, private or community land and housing for a prescribed period, through adverse possession of land and housing, above the rights of absentee owners or the State (*Ibidem,* para. 11)

[75] Use rights are the rights of people to use public or private property for their housing needs (*Ibidem,* para. 13).

[76] Rental encompasses the renting of a plot, dwelling or room from a private or public owner (*Ibidem,* para. 14).

[77] Freehold ownership is the individual ownership that confers full control over housing and land (*Ibidem,* para. 17).

[78] Collective tenure is a type of collective tenure arrangement in which ownership, rental or use rights over land and housing are shared under joint governance structures (*Ibidem,* para. 18).

[79] *Ibidem,* para. 36-40.

Worth highlighting is the discrimination on the basis of tenure status that the SR denounces in this report. First, the SR recalls that property and place of residence (e.g. in a formal or an informal settlement) are prohibited grounds for discrimination[80]. Then, and building upon the CESCR's observations that Covenant's rights, such as water and sanitation, are sometimes made conditional on a person's land tenure status, the SP emphasizes that often discrimination on the basis of tenure occurs in the access for basic services and facilities:

> "People without an officially recognized tenure status are often denied access to basic services and facilities. In some situations, public and private service providers, including of water, sanitation and electricity, require the presentation of title as a prerequisite for connection or delivery. (…) States should take measures to ensure that access to basic services and facilities, whether publicly or privately provided, is not dependent on tenure status, official registration of residence, or the presentation of title"[81].

In a nutshell, tenure security – as a component of the right to adequate housing – is key for the urban poor both for the protection granted against forced evictions, and for the access to basic amenities in the city.

3) Availability of services, Materials, Facilities and Infrastructure and Habitability

The aforementioned article 11(1) must be read as referring not just to housing but to *adequate* housing. The CESCR explains that to be adequate a "house must contain certain facilities essential for health, security, comfort and nutrition, i.e. safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services"[82]. There must thus be non-discriminatory access to all those basic services for the housing to qualify as adequate[83].

4) Location

The CESCR also underlines the importance of the spatial location of the home, which must allow access to employment options, health-care services, schools, child-care centres and other social facilities[84]. This component of the right to adequate housing is particularly

[80] *Ibidem,* para. 51.

[81] *Ibidem,* para. 52.

[82] CESCR, General Comment n° 4, 1991, para. 8(b).

[83] OHCHR, Factsheet n° 21 – Right to Adequate Housing, p. 8.

[84] CESCR, General Comment n° 4, 1991, para. 8(f).

important in the case of resettlement[85]. This is why the SP explicitly posits that "alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted"[86].

5) Accessibility for vulnerable groups

For housing to be fully accessible, the needs of disadvantaged groups must receive special attention in the housing laws and policies established by States. This is clearly related to the principle of equality and non-discrimination enshrined in article 2(2) of the ICESCR[87]. Such vulnerable groups are, for instance, elderly people, children and the physically disabled[88]. The OHCHR also highlighted the specific vulnerability of slum dwellers who often lack tenure security, due to the informal nature of their settlement, which renders them vulnerable to forced evictions, threats and other forms of harassment[89].

6) A right to the city?

The Right To The City (RTTC) is a particular type of collective right developed by the French social scientist Henri Lefèbre in 1968. It entails the exercise of a collective power over the processes of urbanization where each and every inhabitant is entitled to a right to shape the city after its heart's desire[90]. In other words, the RTTC is the right to "claim some kind of shaping power over the processes of urbanization, over the ways in which our cities are made and re-made", to ultimately, exercise "greater democratic control over the production and use of the surplus"[91].

More philosophical and political in nature than strictly legalistic, the right to the city is a useful tool to consolidate human rights claims in the urban context. It specifically addresses issues of spatial segregation, deepening inequalities and marginalization that are common feature of large cities today[92]. The RTTC is not strictly speaking a newly emerging human right, but rather

[85] J. Hohmann, 2014, p. 27.

[86] Special Rapporteur on Adequate Housing, A/HRC/4/18, 2006, para. 43.

[87] J. Hohmann, 2014, p. 26.

[88] CESCR, General Comment n° 4, 1991, para. 8(e).

[89] OHCHR, Factsheet n° 21 – Right to Adequate Housing, p. 21.

[90] D. Harvey, 2008, p. 23.

[91] *Ibidem*, p. 37.

[92] M. Kothari, 2011, p. 12

an articulation of different human rights claims that can emerge within the urban space[93]. While the right to adequate housing is central to the RTTC, the latter goes a step further by seeking to make available to all city dwellers services, benefits and opportunities. In this sense, it is a more all-encompassing and holistic human right response for urban realities today[94]. It is important to note that the concept gained more and more attention within the international human settlement community[95].

CONCLUSION OF TITLE I

Both RTWS and RAH are recognised human rights at the international level. They share a common legal background, i.e. article 11 of the ICESCR, as they both aim to guarantee an adequate standard of living. As a result, a lot of overlapping State obligations are to be derived from both norms: securing – without discrimination – access to water and sanitation facilities within or at reasonable distance from the dwelling for instance. In this sense, no shelter can be depicted as "adequate" if no right to water and sanitation is secured for its residents. Also, during the course of eviction processes, the State must pay particular attention to the affected communities' access to basic services during and after displacement.

Distinctions based upon "place of residence" or "tenure status" for the enjoyment of the RTWS raise suspicion and are subject to high scrutiny under international law. Framing such land-related issues as prohibitive grounds for discrimination suggests hindrances to full realisation in this respect at the practical level. The Special Rapporteur on the RAH has provided responses to arguments used by public providers to justify limited or denied access to basic services in informal settlements: avoid legitimisation or merely focussing on their illegal status. In such a context, our initial hypothesis is likely to be upheld and be received by the international community as a step towards the right(s) direction.

[93] *Ibidem,* p. 144.

[94] *Ibidem,* p. 143.

[95] See for instance: UN Habitat & UNESCO, Urban Public Policies and the Right to the City Conference, March 2005; World Charter on the Right to the City, 2005; UN Habitat, State of the World Cities Report, 2010.

Title II: Normative framework at the Indian level

Now that the relevant concepts have been defined under international law and standards, we can proceed to the same analysis at the domestic Indian level. After preliminary considerations about the Indian legal system in Chapter I; the scope, content and meaning of the right to water, sanitation and shelter will be analysed from a constitutional perspective in Chapter II. Our focal point will be the jurisprudence of the Supreme Court and State High Courts on the subject matter. Chapter III will look at how the fundamental right to water and sanitation has been envisioned in Indian laws and policies. In Chapter IV, using the same approach, we will examine national legislation and programmes for the realisation and protection of the right to shelter. Conclusions will then be drawn with regard to the relationship between land and tenure insecurity and access to basic amenities in Chapter V.

CHAPTER I: INTRODUCTION TO THE INDIAN LEGAL SYSTEM

a. Dualist State

Due to British colonisation, the Indian legal system draws its foundations from the Common Law. One of many consequences is that the legal system follows the "dualist" school of law. The dualist logic views international and domestic law as separate from each other. This means that international treaties that India has ratified, unless incorporated into national law, do not automatically become part of the national legal system[96]. Principles of customary international law on the other hand may well be directly enforced by Indian judiciary on the grounds that they are part of the law of the land[97].

The Indian judiciary has played an active role in "softening the harshness of dualism". Taking an open stance towards international norms and standards, the courts have frequently referred to them as a source of guidance in constitutional and statutory interpretation[98]. State High Courts, under the lead of the Supreme Court, have indeed developed a now well-settled practice

[96] S. K. Agarwal, 2010, p. 4.

[97] V. Sripati, 1997, p. 126.

[98] V. Sripati, 1997, p. 125.

of interpreting domestic law on the basis of international law that is binding upon the Indian State[99].

b. The Union of India

"Federal systems are not a panacea but in many developing countries they may be necessary as the only way of combining, through representative institutions, the benefits of both unity and diversity"[100]

The Union of India is a federation of 29 States, and 7 Union Territories[101]. The federal system in India encompasses three levels of government.

India's central parliament is a bicameral legislature which consists of two Houses[102], namely the House of the People (Lok Sabha) and the House of States (Rajya Sabha)[103]. The Lok Sabha is the principal legislative body. The executive wing of the Central government is headed by the Prime Minister. There is a President whose functions can be compared with those of the British loyalty. Each of the federal states has its own executive power and parliamentary branch drawn from the central model of legislature.

The allocation of powers between the Central and the State level of government is established in the Seventh Schedule (annex to the Constitution). As well as lists of exclusive Union and State powers, there is a list of subjects that can be exercised concurrently. Residual powers are vested with the Central government[104]. Every (Central or State) Parliament enacts laws for the

[99] See for instance the *Sudama Singh and Others vs. Government of Delhi and Anr* decision issued by the Delhi High Court (*Cfr. Infra*). For the Supreme Court see for example: *Apparel Export Promotion Council vs. A.K. Chopra*, (1999); *Kapila Hingorani Vs. State of Bihar* (2003) and *Entertainment Network (India) Ltd. vs. Super Cassette Industries Ltd* (2008) especially para. 48-54 tracing the evolution of its jurisprudence.

[100] Watts, 1966, p. 353.

[101] A Union Territory is a specific category of territory within the Union of India that is directly ruled by the Central government, through a Lieutenant Governor and, is thus not a States with its own Legislature and government.

[102] V. Sripati, 1997, footnote n° 9.

[103] Article 79 of the Indian Constitution.

[104] Article 248 of the Indian Constitution.

territory under their jurisdiction, or part of it[105]. Delhi being a Union Territory with special status, its specific institutional design and relationship with the Central government will be examined in Title III. At this stage of our research it is nevertheless important to highlight the dynamics of power distribution with regard to matters of water, sanitation and land rights.

Land, urban planning, water and sanitation-related functions lie within the purview of the States[106]. Moreover, under the 73rd Constitutional Amendment, states can endow Urban Local Bodies (ULBs) with the power to regulate those issues[107]. Under the federal system of India, the Central government has thus no power to enact water and land-related norms[108]. Nevertheless, the Union maintains its influence through the establishment of directives and guidelines, and the enactment of model legislation. As a matter of fact, the majority of laws and policies issued by the states follow the Union's guidelines and standards, while making slight adjustments to suit the specificity of the State. This is mainly due to the "financial leverage" that the central government is using in its various missions (*Cfr. Supra*). Besides, the Planning Commission, under the GoI, creates the Five-Year Plans (documents spanning five-years that provide policy framework and programmatic contents on the utilisation of the country's resources[109]). Even if its role is a consultative one, the impact of the Five Year Plans has been tremendous on policy formulation, both at the national and state level. India is thus a federation of a special type where the Central government still remains very strong[110].

With adoption of the 73rd and 74th constitutional amendment in 1993, India entered a process of decentralization that established the third-tier of government. The local bodies are called Panchayats Raj in rural areas[111], and Municipalities or ULBs in urban areas[112]. Each Municipality is then divided into territorial constituencies referred to as wards[113]. Because local

[105] Article 245 of the Indian Constitution.

[106] Article 246 and List II of the Seventh Schedule of the Indian Constitution.

[107] Article 243W and the Twelfth Schedule of the Indian Constitution.

[108] Article 246 and List II of the Seventh Schedule of the Indian Constitution.

[109] Planning Commission website.

[110] M.G. Khan describes India's federal system as one featured by a "strong centralized tendency" and the Constitution as one "heavily biased against the States" (M.G. Khan, 2003, p. 168)

[111] Article 243B of the Indian Constitution.

[112] Article 243Q of the Indian Constitution.

[113] Article 243R of the Indian Constitution.

governance is a State subject[114], the devolution of powers to local bodies and concrete implementation of decentralization has been left to the discretion of States.

CHAPTER II: CONSTITUTIONAL PERSPECTIVE

a. General considerations

"Horizons of constitutional law are expanding" [115]

Despite federalism, the Union judiciary has remained unitary[116] with the Supreme Court (SC) at the apex, the State (or Union Territories) High Courts at the intermediary level and the District Courts at the local level.

India has established a system of judicial review expressly provided for under the Constitution[117]. In the Indian context, the doctrine of judicial review is broadly understood as a means for the judiciary to review the constitutionality of any form of State action, be it a legislative Act, judicial decision or administrative action[118]. The power for the judiciary to provide remedy in form of writs[119] for the infringement of human rights (guaranteed under Title III of the Constitution) is vested in Articles 32 and 226 of the fundamental text, for the Supreme Court and the State High Courts respectively. Both the Supreme Court and the State High Courts have the power to punish for contempt of their respective courts (Articles 129 and 215 of the Constitution).

The Supreme Court is the highest Court in the country with constitutional, appellate and advisory jurisdiction. The judicial decisions pronounced by this Court are binding upon all

[114] Item 5, Seventh Schedule of the Indian Constitution.

[115] *Jagdish Saran and Ors. vs. Union of India* (Supreme Court 1980).

[116] India has no dual court system (W. O'Douglas, 1955, p. 6).

[117] Article 13 of the Indian Constitution.

[118] *L. Chandra Kumar vs. Union of India* (Supreme Court 1997).

[119] The different types of writs shall include writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*.

courts within the Indian federation, State High Courts included[120]. The jurisprudence of State High Courts only has value of persuasive precedent towards other High Courts and the SC[121].

The post-independence Indian Constitution lays down a high number of rights and freedoms to be enjoyed by every citizen. However, the human rights recognised are divided into two categories: the "Fundamental rights" (Part III), which mostly cover civil and political rights, and the "Directive principles of State Policy" (Part IV), which require the State to strive for socioeconomic justice[122]. Contrary to the first set of guarantees, the latter is non-justiciable, as specifically provided for in Article 37 of the fundamental text[123].

This formal separation is only the starting point of our constitutional analysis. Through creative readings of the Constitution, which some scholars qualify as expressions of its "judicial activism"[124], the Supreme Court of India is blurring the aforementioned division and progressively enforcing the justiciability of socio-economic rights. The fundamental right to life and personal liberty enshrined in Article 21[125], which is a Fundamental Right legally enforceable under constitutional law, is construed as ensuring the broader "right to live with human dignity"[126]. In this way, socioeconomic guarantees flowing from the Directive Principles, instead of being soft goals that the State has to endeavour to achieve, become legally binding norms. For instance, in the breakthrough decision *Francis Coralie Mullin*[127], a case concerning the rights of inmates in preventive detention, the apex Court held for the first time that:

> "The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. (…) The right to live

[120] Art. 141 of the Indian Constitution.

[121] *M/s East India commercial Co. Ltd. vs. Collector of Customs* (Supreme Court 1962).

[122] Paraphrasing : X, 2007, p. 1080.

[123] Contrary to Article 32, Article 37 provides that "the provisions contained in (…) Part [IV] shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws".

[124] P. Bhanu Mehta, 2007, p. 79 and Ramachandran, 2000, p. 120.

[125] Article 21 of the Constitution reads as follows: "no one shall be deprived of his life or personal liberty except according to procedures established by law".

[126] *Francis Coralie Mullin vs. Union Territory of Delhi* (Supreme Court 1981).

[127] *Ibidem.*

> with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings"[128].

It is important to highlight that the mechanism of public interest litigation played a major role in this expansion of the constitutional landscape[129]. Originally from the United States, this instrument is a "judicially innovated new strategic device for purpose of providing access to justice to large masses of people who are denied their basic human rights and to give judicial redress for legal wrong or injury caused to such determinate class of persons"[130]. As a result, the admissibility of *locus standi* under Article 32 of the Constitution is enlarged to any citizen who has *sufficient* interest, and not restricted to those who have suffered a legal injury, in bringing a community-oriented issue to the Court.

b. Fundamental right to water

It is against this general background that the fundamental right to safe drinking water emerged in India. Like the others socio-economical rights, "the architect of the right to water is judiciary"[131], and Article 21 containing the right to life its "main legal anchor"[132]. Notwithstanding the provisions on the allocation of powers within the Federation, the Constitution contains no specific provision pertaining to the right to water. However, the National Commission on the review of the Constitution suggested otherwise in 2002[133]. The legal foundation of this basic right is hence to be found in the case law issued by the highest courts in environmental pollution cases predominantly, and more recently in cases of inadequate or denial of water supply.

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[128] *Ibidem*, para. 5-6.

[129] See R. Abeyratne, 2014, pp. 42-47.

[130] *S.P. Gupta and Others v. President of India and Others* (Supreme Court 1982).

[131] L. Priya, 2012.

[132] P. Thielbörger, 2014, p. 53.

[133] In 2002, the National Commission to review the working of the Indian Constitution recommended that a new Article 30D reading as follows be created: "every person shall have the right to safe drinking water". Reasons of political turmoil prevented the formal incorporation of the fundamental right to water in the Constitution (Kristen Gonzales, 2013).

The first Supreme Court decision bringing the right to potable water within the scope of Article 21 is *Subhash Kumar vs. State of Bihar*[134], where the judges had to adjudicate on the alleged pollution of the Bokaro River caused by the release of sludge into it by an industrial unit located on its shores. The inadmissibility of the petition for abuse of process did not prevent the Court from holding that the "right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life".

Similar statements on the interdependence of the rights to a dignified life and to clean water are to be found in several decisions of the highest courts[135]. They have in common the protection of the negative side of the basic right, i.e. the right to unpolluted water sources[136].

More recently however, the highest judiciary started mentioning the State's obligation to engage positively toward the full realisation of the right to water throughout the country and expanded its scope of protection beyond (traditional) environmental pollution cases.

In a case dealing with the "agonizing situation" that the inhabitants of Andhra Pradesh faced during summertime due to the insufficient level of water supply, the Supreme Court claimed that the "right to safe drinking water is a fundamental right and cannot be denied to the citizens even on the ground of paucity of funds"[137]. Therefore, the State breached the fundamental right to water of almost half its population when it only provided them with 10 lpcd while the basic minimum is 40 lpcd (*Cfr. Infra*.).

Another decision worth the mention is the *Vishala Kochi Kudivella Samrakshana Samithi* vs. *State of Kerala* case where the Supreme Court addressed the plight of the people of West Kochi who had been clamouring for decades about the supply of potable drinking water provided to them. The judges unequivocally declared that:

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[134] *Subhash Kumar vs. State of Bihar* (Supreme Court 1991).

[135] *F.K. Hussain vs. Union of India* (High Court of Kerala 1990); *Viendra Gaur and Others vs. State of Haryana and Others* (Supreme Court 1994); *Vellore Citizens Welfare Reform vs. Union of India* (Supreme Court 1996).

[136] Paraphrasing J. Kothari, 2006, pp. 2-3.

[137] *Wasim Ahmed Khan vs. Govt. of AP* (Supreme Court 2002).

> "We have no hesitation to hold that failure of the State to provide safe drinking water to the citizens in adequate quantities would amount to violation of the fundamental right to life enshrined in Article 21 of the Constitution of India and would be a violation of human rights. Therefore, every Government, which has its priorities right, should give foremost importance to providing safe drinking water even at the cost of other development programmes. Nothing shall stand in its way whether it is lack of funds or other infrastructure. Ways and means have to be found out at all costs with utmost expediency instead of restricting action in that regard to mere lip service".

On the basis of the two previous judgments, the State carries the obligation to take all the necessary steps to provide safe drinking water to the people denied of it by prioritization of the infrastructures and funds available.

Last but not least, the Mumbai High Court recently delivered a judgment specifically addressing the plight of inhabitants of illegal slums of the city as regard their access to basic amenities[138]. In Mumbai, a Government Circular explicitly prohibits the supply of water in unauthorised settlements, save the ones build before 1st January 2000. In other words, only those slums erected before the cut-off date are entitled to water supply. The Government defended its position on the basis that there is nothing illegal in its policy not to grant water supply to those who are residing in illegal slums, and that ruling otherwise would encourage the construction of such unlawful constructions[139].

The High Court categorically held that housing and water rights are to be separated and cannot influence each other. As far as the slums built after 1st of January 2000 are concerned, "the State cannot deny the water supply to [its inhabitants] on the ground that [they are] residing in a structure which has been illegally erected"[140]. Consequently, the mere fact that a citizen occupies an illegal dwelling and has no legal right to retain it, cannot deprive him/her of his/her fundamental right to water. The reverse is also true: providing water to citizens does not have any bearing on the legal status of their settlement. The Court highlights that "even if the water is provided to a person occupying an illegal hut, the same does not create any equity in such person or the same does not make lawful the structure occupied by such person which is

[138] *Pani Haq Samiti & Ors. vs. Brihan Mumbai Municipal Corporation & Ors* (Mumbai High Court 2014).

[139] *Ibidem,* para. 7.

[140] *Ibidem,* para. 11.

otherwise illegal"[141]. This judgment is significant as it – for the first time at the judicial level – declares land status and basic services entitlements as being two independent issues. In this regard, the judgment is indeed a "landmark achievement of the right to water campaign in India"[142].

Unfortunately, the judgment *in fine* indicates that "occupants of the slums which have illegally come up after 1st January 2000 cannot claim a right to supply drinking water *on par* with a right of a law abiding citizen who is occupying lawfully constructed premises having occupation or completion certificate". If both occupants of legal and illegal dwellings are entitled to the fundamental right to water, the Court still distinguishes them as regard to the precise content and meaning of this right. Such a statement questions the very intention of the Court to realize the fundamental right to water on an equal and non-discriminatory basis.

Our fear is indeed confirmed when the Court enters the policy arena. The judges first order the Municipal Corporation to formulate a policy for providing water supply in some form to the occupants of the slums which have been illegally erected after 1st January 2000[143]. In so doing, "the Municipal Corporation may provide for payment of water charges at a higher rate than the rate which is charged for water supply to the authorized constructions"[144]. The judgment thus upholds a "lesser fundamental right to water"[145] for slum dwellers, sub-category of right-holders with regard to water.

c. Fundamental right to sanitation

Using a rather dramatic tone, the Supreme Court's judges emphasize that the lack of sanitation facilities for slum dwellers endangers the very essence of their human dignity:

> "The grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature's pressure, bashfulness becomes a luxury and dignity a difficult art"[146].

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[141] *Ibidem*, para. 19.

[142] S. Koonan, 2015.

[143] *Pani Haq Samiti & Ors. vs. Brihan Mumbai Municipal Corporation & Ors* (Mumbai High Court 2014), Para. 21(i).

[144] *Ibidem*, para. 21(iv).

[145] S. Koonan, 2015.

[146] *Ratlam vs. Shri Vardhichand and Others* (Supreme Court 1980).

Subsequently, the highest Court has also included issues of sanitation within the expanded construction of "life" under Article 21. For example, in *Virendra Gaur & Others v. State of Haryana*, the Court held that: "the right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed"[147]. Through the right to a healthy environment, the right to life also encompasses access to sanitation facilities.

Besides, it should be noted that the Madhya Pradesh High Court established the (necessary) link between water, sanitation and health in the *Dr K.C. Malhotra* case[148]. The Court held that Article 21 of the Constitution entitles slum dwellers to basic standards, i.e. fresh and uncontaminated water, covered drains, a separate sewage line from which the filthy water may flow out and clean sanitation facilities, in order to prevent health and safety from being at risk[149].

In light of the foregoing jurisprudence, we observe that the development of a fully-fledged right to sanitation is rather limited at the constitutional level.

d. Fundamental right to adequate housing

The list of constitutional provisions, both Fundamental Rights and Directive Principles of State Policy, which have a bearing on the right to adequate housing is extensive[150]. Illustrative thereof is the fundamental freedom to reside and settle in any part of the territory of India enshrined in Article 19 (1) (e), or the legal right to property contained in Article 300-A. However, no constitutional provision expressly provides for a right to shelter. Similarly to the right to water and sanitation, the legal foundations and scope of the constitutional right to adequate housing are to be derived from the jurisprudence of the Supreme Court and the State highest courts.

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[147] *Virendra Gaur & Others vs. State of Haryana*, (Supreme Court 1994). See also: *L.K. Koolwal vs. State of Haryana* (Supreme Court 1998).

[148] *Malhotra vs. State of Madhya Pradesh* (Madhya Pradesh High Court 1993).

[149] *Ibidem*, para. 14.

[150] *Cfr.* the complete list in National Human Right Commission (NHRC), 2011, pp. 8-9.

Almost ten years after the right to livelihood was asserted[151], the apex Court deduced from the Constitution its natural counterpart: the human right to housing. In *P. G. Gupta v. State of Gujarat*, through a joint reading of Articles 19 (1) (e) and 21, the judges claimed the fundamental right to residence and settlement to be a "minimum human right" and "[inseparable] facet of [the] meaningful right to life"[152]. Furthermore, the Court referred to Article 11 of the ICESCR and the State's duties under international law to strengthen its position[153]. Finally, the Court claimed that to foster the realisation of the right to shelter, the State has to provide the urban poor with affordable and permanent housing accommodation by undertaking housing schemes[154].

Within the ambit of the all-encompassing right to life, the right to shelter itself must be broadly understood. In the Supreme Court's understanding, shelter for a human being is also a "home where he has opportunities to grow physically, mentally, intellectually and spiritually". As a matter of fact, shelter, "does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as human being". Therefore, the "right to shelter (…) 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"[155]. A wide spectrum of conditions, including access to water and sanitation, must be fulfilled in order to realize the adequate right to housing under the Indian Constitution.

The highest Court, confronted with a situation of distress that falls within the ambit of Article 21, can still exercise its constitutional power of judicial review to determine whether the deprivation of life occurred as a result of a procedure which is reasonable, fair and just, and hence be justified. A fair balance has to be struck between the different interests at stake as the Supreme Court does not grant a right to encroach to pavement and slum dwellers[156]. This

[151] *Olga Tellis vs. Bombay Municipal Corporation* (Supreme Court 1985), commonly referred to as the "Bombay pavement dweller case".

[152] *P. G. Gupta vs. State of Gujarat* (Supreme Court 1995), para. 11.

[153] *Ibidem,* para. 8.

[154] *Ibidem,* para. 11 *in fine.*

[155] *Chameli Singh & Ors. vs State of UP & Anr*. (Supreme Court 1996).

[156] In *Olga Tellis v. Bombay Municipal Corporation*, the Court stated that: "no one has the right to make use of a public property for a private purpose without the requisite authorisation and, therefore, it is erroneous to

appears clearly in a statement in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors* when the Court held that:

> "It [is] clear that though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful"[157].

The aforementioned judgment re-affirms that the human right to life is not absolute, as restrictions are allowed under a procedure provided by law that is fair and reasonable. More importantly, it validates the positive duty of the State to provide adequate, accessible and permanent housing units to the urban poor, by allocating and earmarking a budget for this most vulnerable section of society, to, ultimately, make socioeconomic justice a reality[158].

Later jurisprudence of India's highest courts demonstrates that Article 21 of the Constitution can also run counter to slum dwellers' best interests. Based upon the Supreme Court's decision in *Almitra Patel*, the *Pitam Pura* judgment issued by the High Court of Delhi in 2002 reversed the judicial construction of Article 21 which had so far prevailed. In those two cases, the judges, by endorsing the city beautification agenda, gave a hard blow to the existing understanding of shelter and housing for the urban poor within the human rights framework.

The *Almitra H. Patel v. Union of India*[159] case was originally a PIL case about garbage management in Delhi. The capital being the "show piece" of India, the Court highly criticized the municipal authorities for the dysfunctions in the waste disposal management, flowing from the failure to prevent the growth of slums in the city. Consequently, the Court directed the State authorities to "take appropriate steps for preventing any fresh encroachment or unauthorised occupation of public land for the purpose of dwelling resulting in creation of a slum. Further appropriate steps be taken to improve the sanitation in the existing slums till they are removed

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contend that the pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon".

[157] *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan* (Supreme Court 1997).

[158] National Human Right Commission, 2011, pp. 10-11.

[159] *Almrita H. Patel vs. Union of India* (Supreme Court 2000).

and the land reclaimed"[160]. Additionally, no resettlement site had to be provided to the evicted slum dwellers, as "rewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket"[161]. A scholar has observed that the use of the "illegal encroachment" narrative and equating slums with illegality has started spreading among the Indian judiciary since the Supreme Court's judgment[162].

Building on the Supreme Court's decision, the Delhi High Court provided the "technical traction to the new discourse"[163] in *Pitam Pura Sudhar Samiti v. Union Of India*[164]. The petitioners, a Resident Welfare Association (RWA), filed a PIL alleging that the *Jhuggie Jhompri* (JJ) clusters – encroachers of public land – were constructed in an illegal manner and were causing nuisance of various kinds for the residents in the vicinity. Language such as "health hazard", "obnoxious smell" and "decent living" is used in the petition, but only to describe the residents' standards of living. In this case, the Court briefly mentions the right to shelter, before arguing that "there are cleaner ways to achieve that goal than converting public property into slum lords' illegal estates"[165]. The right to shelter of slum dwellers is conceived, not from a human rights perspective, but as a means to achieve full cleanliness in the city.

Against this background, the High Court operates the balance between the compelling interests at stake. Significantly enough, the welfare of the residents-petitioners is brought under the realm of public interest. This broad understanding of "the public" has paved the way for a new judicial reading of Article 21. As a matter of fact, "the welfare, health, maintenance of law and order, safety and sanitation of these residents cannot be sacrificed and their right under Article 21 is violated in the name of social justice to the slum dwellers"[166]. Because "these residential colonies were developed first (…) and the slums – which is the cause of nuisance and brooding ground of so many ills – have been created afterwards, ", the former group's right to life should trump the latter's. This new reinterpretation of Article 21 thus elevates the quality of life and

[160] *Ibidem*, operating para. 6.

[161] *Ibidem*, para. 14.

[162] A. Ghertner, 2008, p. 7.

[163] *Ibidem*, p. 7.

[164] *Pitam Pura Sudhar Samiti vs Union Of India And Ors* (Delhi High Court 2002).

[165] *Ibidem*, para. 19.

[166] *Ibidem*, para. 18.

enjoyment of owned land of citizens over the livelihood of slum dwellers. It was not long before scholars vehemently denounced this judicial evolution[167].

It is interesting to compare the role played by the PIL mechanism in the aforementioned cases with its original purpose of serving the interests of the people belonging to the deprived sections of society[168]. Scholars have expressed that "it is ironic that Public Interest Litigation, which was devised by the Supreme Court with the express intent that the indigent and the powerless could have rights, has been the vehicle for effecting large-scale demolitions of the dwellings of the urban poor"[169]. As a matter of fact, until 2008 the Delhi High Court itself often engaged, through court orders and contempt of court mechanisms, in the eviction and removal of squatter settlements in the city (*Cfr. Supra*).

Luckily, two recent judgments of the Delhi High Court reversed the harshness of previous judgments and established new foundations for the protection of the right to housing in India. Even if the two decisions do not share a similar factual background, they re-assessed the right to shelter as a basic right and highlighted its importance in the specific context of the case[170].

In *Sudama Singh and Others vs. Government of Delhi and Anr.*, petitioners addressed the Delhi High Court to seek relocation and rehabilitation following their eviction from various slum clusters in the city. Most of the demolitions were carried out for the purpose of constructing new roads or widening of existing ones. The State authorities indeed argued that

[167] See the language used by U. Ramanathan when talking about the "unidimentional understanding of the illegality of the housing of the urban poor" that had "dramatic impact on the lives of the poor in Delhi" (U. Ramanathan, 2005, p. 3193) or by Shri Bushan Prashant, advocate at the Supreme Court, when he describes the "recent role of the courts in not just failing to protect the rights of the poor that they had themselves declared not long ago, but in fact spearheading the massive assault on the poor" (B. Prashant, 2006, p. 20).

[168] *S.P. Gupta and Others vs. President of India and Others* (Supreme Court 1982).

[169] V. Dupont & U. Ramanathan, 2008, p. 337.

[170] See for comments on those two judgments: Housing and Land Rights Network (HLRN), 2013.

the inhabitants were occupying land which comes under the category of "Right of Way"[171] and therefore were not entitled to any compensation or alternative land under any policy or scheme.

By referring to global standards[172], the High Court emphasized its holistic understanding of the right to adequate housing by stipulating that "the implementation of housing rights would include emphasis on the physical structure such as the provision of drinking water, sewer facilities, access to credit, land and building materials as well as the de jure recognition of security and tenure and other related issues"[173]. The judges underline the duality of the fundamental right that needs to be articulated both at the material and the legal level.

The Court then stressed the adverse impacts of forced evictions by stating that "what very often is overlooked is that when a family living in a *jhuggi* is forcibly evicted, each member loses a *bundle of rights* – the right to livelihood, to shelter, to health, to education, to access to civic amenities and public transport and above all, the right to live with dignity"[174]. The interlinked nature of human rights is firmly assessed and its translation into practice has very detrimental impacts on the lives of forcibly evicted people.

Eventually, the so-called policy of the "Right to way" policy was dismissed by the High Court which hence declared that the denial of the benefit of rehabilitation to the petitioners violated their right to shelter guaranteed under Article 21 of the Constitution.

The *PK Koul and Others vs. Estate Officer and Anr. and Others*[175] case contrasts with the Delhi High Court decision analysed previously because, firstly, petitioners were Internally

[171] No detailed definition of the "Right of Way" is provided for in the decision, but based on the aforementioned *Ahmedabad* case we deduced that this right entails protection of the right of every citizen to pass or repass on the pavement, street, footpath as general amenity for convenient traffic.

[172] The High Court made extensive reference to international law on the subject of forced eviction and resettlement, such as General Comment n° 7 on the right to adequate housing, Special Rapporteur's guidelines on relocation of displaced people and the CESCR's observations on India of May 2008. The judges also referred to foreign caselaw, such as the *Irene Grootboom* and *Joe Slovo* cases of the South African Supreme Court (*Ibidem,* para. 53-54).

[173] *Ibidem*, para. 29.

[174] *Ibidem,* para. 44. Our own emphasis.

[175] *P.K. Koul and Ors. vs. Estate Officer and Anr. and Ors* (High Court of Delhi 2010).

Displaced People (IDPs) fleeing from the instable States of Kashmir and Jammu. The judges nevertheless uphold the judicial interpretation of Article 21 developed in the above decision.

In light of the previous developments, few would argue with the statement that judicial pronouncements by the courts have had a significant impact on the crafting of the human right to adequate housing in the Indian constitutional landscape. Although the minimum procedural guarantees for eviction and the policy of resettlement were seriously endangered, recent jurisprudence has resulted in these important procedural safeguards being recognised with regard to inhabitants of informal settlements. It should be noted however that the vast majority of shelter-related cases deal with situations of displacement, eviction and resettlement. No courts have had to rule on the matter of inadequacy of shelter due to a lack of basic amenities, such as water and sanitation, outside of the specific context of eviction and resettlement. This observation is echoed in G. Dewan Verma's book when she expresses that NGO's – through *inter alia* the PIL mechanism – have "reduced housing rights to the right not to be evicted"[176].

[176] G. D. Verma, 2002, p. 74.

CHAPTER III: RIGHT TO WATER AND SANITATION

The deplorable situation regarding water and sanitation in urban areas is a source of concern for the Government of India. Improvement has been aimed for, from different angles: (a) the prevention and protection against water pollution, (b) the establishment of norms for water supply and sanitation and (c) poverty alleviation programmes. From the outset it should be noted that none of the following documents mention the human rights to water and sanitation *per se*, but grant protection through different avenues which will be analysed subsequently. In order to remain within the boundaries of this study, we will not further explore national policies aimed at the rural water supply sector[177].

a. Prevention and protection against water pollution

Despite the absence of a constitutional mandate (*Cfr. Supra*), the Central government intervened in an area for which countrywide regulation was deemed necessary: water pollution. In that regard, the Government of India adopted the Water (Prevention and Control of Pollution) Act in 1974 that seeks the "prevention and control of water pollution, and (…) the maintaining or restoring of wholesomeness of water in the country"[178].

The Supreme Court's judicial intervention has been crucial in establishing the link between water pollution and drinking water[179]. Referring to previous developments, we can further mention the *Andhra Pradesh Pollution Control Board II v. Prof. M.V. Nayudu (Retd)* decision where the Court stated that "the fundamental objective of the (Water Act) is to provide clean drinking water to the citizens"[180]. The highest judiciary has consistently engaged in highlighting the human rights component in environmental justice cases of water pollution.

b. Norms of water supply and sanitation

One can trace back the origin of norms on access to basic amenities, such as water supply and sanitation, for the urban poor to the Fifth Five Year Plan and the Environmental Improvement of Urban Slums (EIUS) scheme. As a matter fact, EIUS laid down for the first

[177] *Cfr.* for example the Rajiv Ghandi National Drinking Water Mission that fosters full coverage of water supply in Indian rural villages.

[178] Preliminary provisions of the Water (Prevention and Control of Pollution) Act, 1974.

[179] Paraphrasing Ch. Cullet, 2010, p. 334.

[180] *Andhra Pradesh Pollution Control Board II vs. Prof. M.V. Nayudu* (Supreme Court 2000).

time basic physical standards to improve the quality of life of the urban poor[181]. It was a centrally sponsored program that began in 1972 and was transferred to the State level in 1974 and is now subsumed under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM).

As demonstrated in the table below, the scheme proposed the provision of seven basic amenities, amongst which are water supply and sanitation facilities, to enhance the living conditions in slum areas. The standards set forth are low: one tap for 150 people and a single bath and toilet facility are supposedly to cover 20-50 people. These guidelines will be used as a basis in subsequent poverty alleviation programs, such as the Urban Basic Services for the Poor (*Cfr. Infra*) or the Prime Minister's Integrated Urban Poverty Eradication schemes[182].

Physical Norms and Standards as per Govt. Sponsored EIUS Programme[183]

Service Components	Level/Norms
1. Water supply	One tap for 150 persons
2. Sewerage	Sewer open drains with normal outflow avoiding accumulation of stagnant waste water
3. Strom water drains	To drain out storm water quickly
4. Community baths	One bath room for 20-50 persons
5. Community latrines	One latrines for 20-50 persons
6. Footpaths/lanes	Widening and paving of existing lanes to make room for easy flow of pedestrian, bicycles and handcarts, lane on paved paths to avoid mud and slush.
7. Street lighting	Poles 30 meters apart
8. Additional activities	Community facilities such as community centres, crèche, dispensaries, non-formal centres, parks, common work sheds-cum-raw materials depot for poor, common retail outlay for beneficiaries, municipal service centres for garbage disposal and maintenance have been added to the charter of activities of the EIUS programme.

In 1999, the Central Public Health and Environment Engineering Organisation (CPHEEO), supported by the Ministry for Urban Development and Poverty Alleviation, published the Manual on Water Supply and Treatment. This document contains recommendations and standards of municipal water supply for domestic uses. The

[181] K. Seetharam Sridhar *et al.*, 2011, p. 102

[182] One main component of the scheme is the provision of physical amenities as given in the EIUS scheme (L. N. P. Mohanty & Sw. Mohanty, 2005, p. 68).

[183] GoI, 1996 (in M.P. Mathur *et al.*, 2007, p. 9).

recommended maxima per capita water supply to be delivered are specified in the table below. When communities rely on public stand-posts (e.g. squatter settlements or resettlement colonies) the recommended maximum is 40 lpcd. This threshold almost doubles in cases where there is a piped water supply coverage without a sewerage system and triples when a sewerage system is existent[184]. The Planning Commission took over these norms of water supply in the Tenth Five Year Plan (2002-2007)[185].

TABLE 2.1

RECOMMENDED PER CAPITA WATER SUPPLY LEVELS FOR DESIGNING SCHEMES

Sl. No.	Classification of towns/cities	Recommended Maximum Water Supply Levels (lpcd)
1.	Towns provided with piped water supply but without sewerage system	70
2.	Cities provided with piped water supply where sewerage system is existing/contemplated	135
3.	Metropolitan and Mega cities provided with piped water supply where sewerage system is existing/ contemplated	150

Note:

(i) In urban areas, where water is provided through public standposts, 40 lpcd should be considered;

(ii) Figures exclude "Unaccounted for Water(UFW)" which should be limited to 15%

(iii) Figures include requirements of water for commercial, institutional and minor industries. However, the bulk supply to such establishments should be assessed separately with proper justification.

Lastly, the Draft National Water Framework Bill 2013 upholds 25 lpcd to be the absolute minimum of potable water[186], without regard to the source of supply.

As far as sanitation is concerned, no further standards have been declared. We can nonetheless refer to the Draft National Slum Policy (DNSP) finalized in 2001[187]. Although the document never underwent the legislative process for adoption as a bill, it provides general

[184] GoI, 1999, p. 9.

[185] GoI, 2002, p. 636.

[186] GoI, 2013(a), Article 4.

[187] GoI, 2001.

guidance and model legislation for States willing to adopt a slum policy[188]. Under the heading "physical infrastructure development", the draft provides for "the norms for cluster latrines at the rate of one seat for 50 people (…), with adequate institutional arrangements for maintenance and upkeep with involvement of community". The draft emphasizes the household responsibility for Operation and Maintenance (O&M) so that the quality of the cluster latrines does not degenerate. Further on, the DNSP recommends the installation of twin pit latrines, in the absence of underground drainage and sewerage systems, and specifies that "the tenurial status and likelihood of a settlement getting relocated at some point in the future should not deter promoting such systems since the benefits of such environmental improvement far exceed the initial investment incurred". Under the Policy Draft, issues of tenure cannot get in the way of infrastructure improvement for the urban poor.

c. Poverty alleviation programmes

All of the following schemes and missions are initiatives of the Central government to strive for poverty alleviation. Gradually, the specific instrument used to fight against poverty in urban areas has turned out to be the improvement of access to basic services in low-income settlements[189]. This strategy is explicitly endorsed by the GoI in the Ninth Five Year Plan (1997-2002)[190]. These national water and sanitation policies are to be understood as non-binding "statements of intent towards the adoption of framework water legislation (by the states)"[191].

1) Basic Services for the Urban Poor

The Urban Basic Services for the Poor (UBSP) program started in 1991 and got subsumed and renamed under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) in 2005, both overseen by the Indian Ministry of Urban Development and Poverty Alleviation (MoUDPA). The Basic Services for the Urban Poor (BSUP) is a mandatory urban poverty reform for all municipal corporations under JNNURM. While JNNURM ended in

[188] See, for instance, the Bihar State Policy enacted in 2011 that endorses the key objectives and governing principles of the DNSP.

[189] M.P. Mathur e*t al.*, 2007, p. 8.

[190] See specifically section 1.37 (GoI, 1997).

[191] Ch. Cullet, 2012, p. 72.

2012, the BSUP sub-mission ending date is on March 21, 2017[192]. The goal is to "provide basic services, including water supply and sanitation, to all poor including security of tenure, and improved housing at affordable prices and ensure delivery of social services of education, health and social security to poor people"[193]. What is key for the BSUP program is to foster universal and equitable access to basic services for all urban dwellers – including the ones living in non-notified, irregular or illegal settlements – by connecting these areas to municipal services, *inter alia*, water supply and toilets[194].

The interrelated nature of tenure security and access to basic services, such as water and sanitation, is firmly assessed in the program. The first step for implementing BSUP is to provide the urban poor with security of tenure. While the latter can be the result of different arrangements (lease or ownership), one secured outcome is that the urban poor begins to make investments in house upgrades and show greater readiness to pay for individual basic services[195]. During the process of securing tenure rights, municipal service investment in community stand-posts and community toilets will foster the necessary slum upgradation. It is interesting to note that tenure security is equated with access to water and sanitation, as both are basic services entitlements for the urban poor.

2) National Urban Sanitation Policy

The Government of India, MoUDPA, launched the National Urban Sanitation Policy (NUSP) in 2008 to transform urban India into community-driven, totally sanitized, healthy and liveable cities and towns[196]. Sanitation is broadly defined as the "safe management of human excreta, including its safe confinement treatment, disposal and associated hygiene-related practices"[197]. In order to achieve total sanitation in urban areas, the policy is not only focused on infrastructure development, but also on behaviour change[198].

[192] Initial ending date was on March 21, 2015 but the mission got extended by two years in order to complete ongoing projects (X, "Government extends basic services to urban poor programme till March 2017", *The Economic Times*, 6 May 2015).

[193] GoI, 2010, p. 2.

[194] Paraphrasing GoI, 2010, p. 7.

[195] *Ibidem*, p. 5.

[196] GoI, 2008, p. 7.

[197] *Ibidem*, p. 6.

[198] Awareness generation and behaviour change is one pillar component of the NUSP (J. Ravikumar, 2008).

One important goal of this national policy is to achieve open defecation-free cities through access to and use of safe and hygienic sanitation facilities. As a subsidiary to the promotion of household-based safe sanitation facilities, the NUSP promotes "community-planned and managed toilets *wherever necessary*, for groups of households who have constraints of space, *tenure* or economic constraints in gaining access to individual facilities"[199]. "Constraints of tenure" seemingly hinder the construction of household-based sanitation facilities in some urban areas.

3) Swachh Bharat Mission (2014-2019)

The Swachh Bharat Mission (SBM) is a joint mission of the MoUDPA and the Ministry of Drinking Water and Sanitation. The former will implement the mission in urban areas, the latter in rural villages. The shared mission is supposed to bring about a "holistic transformation of the sanitation scene"[200] for 2019, 150th anniversary of the birth of Mahatma Ghandi.

The SBM further pursues goals of the NUSP, such as the elimination of open defecation and behavioural change regarding healthy sanitation practices, but also adds new targets, the abolition of manual scavenging for instance.

To achieve the eradication of open defecation, the SBM engages in the construction of household and community toilets[201]. The choice of one or the other by the ULBs is based upon the potential "land and space constraints" in the given urban zone. Interestingly, there was a need to emphasize twice in the SBM Guidelines that: "beneficiary households will be targeted under this scheme irrespective of whether they live in authorized/unauthorized colonies or notified/non- notified slums. Under SBM (Urban), tenure security issues are to be dissociated from benefits"[202]. Significant discretionary powers are vested with the ULBs to judge the feasibility of installing household latrines.

[199] GoI, 2008, p. 8 (our own emphasis).

[200] GoI, 2014, p. 2.

[201] In the SBM (urban) Guidelines, the community toilets are described as such: "community toilet blocks are used primarily in low-income and/or informal settlements /slums, where space and/or land are constraints in providing a household toilet. These are for a more or less fixed user group" (GoI, 2014, p. 4).

[202] GoI, 2014, pp. 8-9.

CHAPTER IV: RIGHT TO ADEQUATE HOUSING

The Union's government is formally not entitled to regulate on land tenure issues (*Cfr. Supra*). Nevertheless, numerous model legislations and policy documents have been enacted at the national level, thus ensuring the Ministry of Urban Development's grip on the urban land and housing sector. None of these texts of countrywide application explicitly mention the human right to adequate housing. Protection is provided however, through different channels addressing the different facets of vulnerability that flow from the breach of this basic right. These (indirect) avenues of protection are (a) the protection against forced eviction, (b) security of tenure and (c) slum upgradation. It is important to note that, as all these issues are inter-related, a lot of overlap will come about.

a. Protection against forced eviction

The Slum Areas (Improvement and Clearance) Act of 1956[203], is the first statute enacted by the Central government that deals with slums in a legislative framework. Its scope of application extends to all Union territories[204]. Later on, it was used as the statutory base by most States for the adoption of their own Slum Areas Act[205].

> ***"Kutcha", "semi-pucca" and "pucca" houses***
>
> *In Hindi, the word kutcha refers to temporary housing arrangements, while pucca are durable constructions. The first one uses materials such as bamboo and tarpaulin, while the second is made of brick walls and concrete roof. In between, the semi-pucca house is featured by brick walls but corrugated tin roofs.*
>
> *(J. King, 2012)*

The purpose of the Bill is to deal with the insanitary conditions in dilapidated, overcrowded, insanitary *pucca* buildings. The Minister for Home Affairs explained to the *Lok Sabha* that:

[203] Slum Areas (Improvement and Clearance) Act of 1956.

[204] Section 1(2) of the Act. It came into force in the Union Territory of Delhi on 8 February 1957.

[205] See for instance: Punjab Slum Areas (Improvement and Clearance) Act of 28 December 1961; Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act of 1971; Karnataka Slum Areas (Improvement and Clearance) Act of 1973.

"the Bill seeks to remove this evil (slums)… and we hope that vigorous measures will be taken in order to restore some sort of decency of life to the large numbers who are living under unimaginable conditions in these areas today"[206]. As a result, the Act contains a definition of slum based upon the inadequacy of shelter. Indeed, slum areas are "buildings that are in any respect unfit for human habitation, or are by reason of dilapidation, overcrowding, faulty arrangement and design of such, buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, are detrimental to safety, health or morals"[207].

The Act has played an important role for slum dwellers in a number of ways. First, the Act entitles the competent authority to formally declare buildings being "unfit for human habitation" as a slum area. Criteria upon which the authority can base its decision are, among others, water supply, drainage and sanitary conveniences (section 3). It is the physical aspect of slums which is primarily taken into account in the Act[208].

Attention should be drawn to the fact that although the physical conditions of a slum are present in practice, it has to be formally notified by the competent authority to be a considered a slum area. This is how informal settlements have existed in cities for decades at the margin of the legal housing system and invisible with regard to urban planning, because they fell through the net of formal slum notification (*Cfr. Infra*).

Under the Act, a three-pronged approach has been endorsed for designated slum areas: (i) Clearance/Relocation; (ii) In-situ upgradation; and (iii) The environmental Improvement Urban Services (EIUS) scheme. The first step under the Act is to ascertain whether or not a building in a slum area can be rendered fit for human habitation at a reasonable expense[209]. In the positive

[206] GoI, 1983, p. 64.

[207] Slum Areas (Improvement and Clearance) Act of 28 December 1956, section 3.

[208] On of the major criticism voiced by the Task Force on Housing and Urban Development (set up by the Planning Commission in 1983) is that the slum definition set forth in the Act only refers to the physical aspects of the building, without any regard to the legal or illegal character of it. (See further: GoI, 1983)

[209] In determining, for the purposes of this Act, whether a building can be rendered fit for human habitation at a reasonable expense, regard shall be had to the estimated cost of the works necessary to render it so fit and the value which it is estimated that the building will have when the works are completed (Slum Areas (Improvement and Clearance) Act of 28 December 1956, section 4(3)).

case, the owner has to execute the works of improvement (the in-situ upgradation prong). In the negative case, the competent authority can issue an order of demolition of the building (clearance/relocation prong). Before taking such a decision, the opportunity is given under the Act for the owner or any other occupant for their arguments against demolition to be heard by the authority[210]. The Act also provides for adequate notification and compensation for demolition. In any case, declaring a certain area to be a slum area makes it eligible for slum improvement under the EIUS scheme (third prong).

Furthermore, notification as a slum grants protection to tenants against eviction from such areas (section 19). The competent authority being the only one entitled to pass an order for demolition, tenants in slum areas will be protected against forced evictions from their landlords. This safety net has – arguably – been described as "implying tenure security, as residents cannot be evicted without the approval of the competent authority"[211]. Nevertheless, slum dwellers encroaching on public lands do not enjoy the protection of section 19[212].

The Public Premises (Eviction of Unauthorised Occupants) Act of 1971 specifically provides for the eviction of unauthorised occupants from public premises. It is a central government Act that applies to the whole territory of India.

This national statute has a very broad scope of application. "Unauthorised occupation" under the Act means "the occupation by any person of the public premises without authority for such occupation"[213]. The word "inhabitant" or "dweller" is never used in the legislative text, but rather "unauthorised occupant" is mentioned. This seems to suggest that the occupation of public premises is first and foremost an encroachment that needs to be wiped out, before being a shelter for people. Besides the notion of "public premises" being very broadly defined[214], the

[210] *Ibidem*, section 7.

[211] B. Banerjee, 2011, p. 39.

[212] See section 21 of Chapter VI of the Act that state as follows: "nothing in this Chapter shall apply to or in relation to the execution of any decree or order under any law for the eviction of a tenant from any building in a slum area belonging to the Government, the Delhi Improvement Trust or any local authority".

[213] Public Premises (Eviction of Unauthorised Occupants) Act of 1971, section 2 (g).

[214] *Ibidem*, section 1(2).

Act contains very little procedural safeguards for unauthorised occupants of those public premises[215].

The previous developments demonstrate that the statutory framework for protection against forced eviction is rather limited. One should avoid concluding, *ipso facto,* that non-notified slums or illegal settlements on public lands lack any form of tenure security. The evolution of the narrative at the policy level is of great importance in this regard. In line with the emergence of concerns about tenure security (*Cfr. Infra*), "a change in the official discourse occurred from eviction toward rehabilitation"[216]. Illustrative thereof is the National Housing Policy of 1994 that clearly stipulates that:

> "the central and state governments must take steps to avoid forcible relocation or "dis-housing" of slum dwellers. They must encourage in-situ upgrading, slum renovation and progressive housing developments with conferment of *occupancy rights* wherever feasible. They must undertake selective relocation with community involvement only for clearance of sites which take priority in terms of public interest"[217].

The Policy contains no precise definition of the "occupancy rights" to be conferred but we can probably refer for further enlightenments to the concept of the "right to stay" developed by L. Weinstein[218].

b. <u>Security of tenure</u>

In India, there is no policy pertaining directly to the issue of tenure security. Nevertheless numerous official documents have acknowledged the importance of the issue, and translation into real policy action came about with the Rajiv Awas Yojana Mission in 2013.

In 1983, the Task Force on Housing and Urban Development of the Planning Commission blazed a trail emphasizing the impact of tenure security on slum improvement. In the absence of it, "the residents are reluctant to do shelter improvements any more than absolutely necessary to attain minimum liability"[219]. The Task Force points out that the emergence of squatter settlements in urban areas is a result of deficient land supply for the urban

[215] *Ibidem,* section 5.

[216] Interview with R. Khosla, Director, Centre for Urban and Regional Excellence, Delhi, 24 April 2015.

[217] GoI, 1994, p. 6. Our own emphasis.

[218] L. Weinstein, 2014.

[219] GoI, 1983, p. 64.

poor[220], and as long as affordable housing stock is not provided, no corrective measure for slum improvement will ever achieve its goal in the case of hutments.

The Seventh Five Year Plan (1985-1990) echoed the views of the Task Force by indicating that "steps should be taken to provide security of tenure to the slum dwellers so that they may develop a stake in maintaining and improving their habitat"[221]. The Eighth Five-Year Plan (1992-1997) in turn observed that, with regard to EIUS, "assurance of providing tenurial rights (…) [is an] important pre-condition(s) for the success of the programme in a longer term context"[222]. Finally, the Draft National Slum Policy also did its bit by recommending that "tenure shall be granted to all residents on tenable sites owned or acquired by government. Full property rights shall be granted on resettlement and/or rehabilitation sites"[223].

The most recent effort to secure tenurial rights for the urban poor is the Rajiv Awas Yojana (RAY) Mission launched in 2011. The final goal is to achieve a "Slum-Free India" by 2022. In order to tackle the problem of slums in a definitive manner, the RAY establishes a set of curative and preventive measures. On the one hand, existing slums have to be upgraded to bring them into line with the formal system and enabling them to avail of the same level of basic amenities as the rest of the town. On the other hand, in order to prevent the development of new slums, the failure of the formal system that lie behind their creation must be redressed and shortages of urban land and housing must be dealt with[224].

One key feature of RAY was that States had to prepare legislation for assignment of property rights to slum dwellers. In this sense, one pre-condition for central government funding under RAY was for States to "assign legal title to slum-dwellers over their dwelling space"[225]. For the purpose of extending ownership rights, the MoUDPA enacted the Draft Property Rights to Slum

[220] "The emergence of hutments can be directly attributed to Town Planning legislation and building regulations which lay down standards of space, services and construction, the achievement of which is beyond the investing capacity of the low-income population" (GoI, 1983, p. 67).

[221] GoI, 1985, p. 103.

[222] GoI, 1992, Vol. II, p. 73.

[223] GoI, 2001.

[224] GoI, 2012, p. 1.

[225] *Ibidem*, p. 1.

Dwellers Act[226] to be used as model legislation for States[227]. Under the Act, entitlement to property rights is based upon residency before the cut-off date of 9th June 2009, the legal status of the land is irrelevant. It is an understatement to say that States were not really keen on granting absolute ownership rights to slum dwellers[228]. Given the "lukewarm response"[229] of States to this policy, the bill was revised to replace absolute property rights with long-term lease. Revision of the Bill also introduced imprisonment sentences and fines for encroachers on public lands[230].

In addition to this, the RAY endorses a "whole-city" approach so that a holistic plan is prepared for the upgradation of all existing slums in the city: notified as well as non-notified, all unauthorised colonies and regularised colonies not currently being served by municipal services[231]. Furthermore, a holistic approach for coverage of all basic services for each slum taken up for redevelopment is endorsed[232].

It is worth noting that the Central government strongly voiced in RAY its preference for *in situ* slum upgradation, instead of eviction. This implies that no eviction should take place unless "absolutely necessary" (in the case of untenable sites), and in such cases the alternative locations must be chosen in consultation with the concerned urban poor communities. Untenable sites are defined as "those slums which are on environmentally hazardous sites (like riverbank, pond sites, hilly or marshy terrains, etc.), ecologically sensitive sites (like mangroves, national parks, sanctuaries, etc.), and on land marked for public utilities and services (such as major roads, railway tracks, trunk infrastructure, etc.)"[233]. Also, slum resettlement "will be to the extent possible within the same ward/zone or the adjoining ward/zone to minimize adverse impacts on livelihoods and community assets and access to

[226] GoI, 2011.

[227] See, for example, the Odisha Property Rights to Slum Dwellers and Prevention of New Slums Bill, 2012.

[228] Many States indeed expressed reluctance to give absolute ownership rights to slum dwellers (S. Chandana Das & R. Bhise, 2014)

[229] N. Kumar Kulkarni, 2013.

[230] GoI, 2011, section 17.

[231] GoI, 2012, p. 12.

[232] GoI, 2012, p. 2.

[233] GoI, 2013(b), p. viiii.

health and education facilities"[234]. Of course, it is the translation of such guidelines at the State level that is of significant importance to offer tangible protection. We shall see that in the case of Delhi, the narrative towards slums in the public arena and intervention of the High Court has placed tremendous hurdles for implementation of government policies under JNNURM and RAY.

Recently, the newly elected government launched the "Housing for all by 2022" program supposedly to house every family in *pucca* housing by 2022, 75th anniversary of Independence. The target is to provide about 20 million houses over seven years[235]. Implementation details are yet to be disclosed.

c. Slum upgradation

Slum upgradation refers to the integrated development schemes that aim at improving the environmental conditions of urban slums. These programs emerged as part of the broader goal of urban poverty alleviation, by boosting access to basic services for the urban poor, fostered by the Central government (*Cfr. Supra*).

The Environment Improvement of Urban Slums (EIUS) is a centrally sponsored program, which in 1972, as mentioned earlier, laid down for the first time minimum norms for improvement of the slum environment. Besides these norms, the programmes provides for some improvements to be carried out (communal water taps and latrines, the construction of open drains, etc.) in areas formally declared as slums under the Slum Areas Act. Moreover, the guidelines of the EIUS require the slum area not to be earmarked for clearance for at least 10 years from the start of the improvement works[236]. The purpose of this condition was to justify public expenditure, but it has also led to some security of tenure for the beneficiaries, although no mention of tenure regularization is made[237].

[234] GoI, 2013(b), p. 2.

[235] X, "Government plans 20 million houses for urban poor", *The Hindu*, 18th June 2015.

[236] GoI, 1982.

[237] Paraphrasing B. Banerjee, 2011, p. 39.

CONCLUSION OF TITLE II

The fundamental rights to water and sanitation are well-established norms of constitutional law in India. Through creative readings of Article 21 of the Constitution, the Supreme Court and the State Highest Courts have provided the rights of a socio-economic nature with a much-needed legal traction. What is less well established and remains a source of concern is the precise entitlements of the different categories of right-holders. We think – of course – of the recent judgment issued by the Mumbai High Court discussed at length in Chapter II, but there are other traces of distinctions that are not necessarily justified by one's group specific vulnerability. We can refer, for instance, to the variations among the norms for water and sanitation according to the type of water supply source (stand-post or pipeline). "Land and space constraints" also create a distinction in benefits (community-based or household-based sanitation) under the Swachh Bharat Mission.

The same is true with regard to adequate housing. Discrepancy is to be noted between the universal recognition at the constitutional level, and the variations in entitlements according to the legal status of the land at the legislative level. The legal status and categorisation of a given piece of land is of fundamental importance for procedural protection against forced evictions (whether notified or not, whether on public or private land) and enjoyment of benefits under the EIUS scheme. Three classifications can be recorded so far: the notified vs. non-notified areas, the public vs. private-owned lands and finally the tenable vs. untenable sites.

We will further investigate in Title III whether the various categories of RTWS holders can be linked to the categorisation of land status or the other tenurial issues that have been highlighted. We must nevertheless emphasize at this point the numerous endeavours at the policy level to ensure that slum dwellers' access to basic services is not made dependent upon their tenurial status and the temporary character of their settlement (*Cfr.* the Draft National Slum Policy or the Swachh Bharat Mission as illustrations). The competing interests at stake are seemingly, on one hand, the return on public investment made and, on the other hand, universal coverage of basic services.

Title III: The tale of two slums in Delhi

CHAPTER I: GENERAL CONTEXT IN DELHI

This Chapter aims to provide a general picture of the context in Delhi with regard to our subject-matter: its demography, institutional design, service providers, the water and sanitation situation and the typology of informal settlements. Setting the stage before the case study is the primarily goal, but we will also distinguish patterns that may emerge from various policies and practices through which the governing institutions engage with the poor residents in the city.

The National Capital Territory (NCT) of Delhi is the capital of India. It is spread over an area of 1.486 sq.km. There were originally a large number of villages (300) within the Delhi metropolitan region[238], but today it has grown to be the most urbanised area of the country[239]. As per the 2011 Census (provisional figures), the total population of Delhi amounts to 16.753.235. This is a growth of 20.96% compared to 2001 when the total population in the capital reached 13.850.507. This rise is relatively low compared to previous decadal growths experienced in Delhi between 1981-1991 (51.45%) and between 1991-2001 (47.02%). Despite a lower population growth, the overall population density of Delhi has increased from 9.340 persons per sq.km. in 2001 to 11.297 persons per sq.km. in 2011, which is the highest density in the country[240]. Over the years, Delhi has developed a "strong and vibrant economy"[241], the Gross State Domestic Product indicating a growth rate of 18.84 % during the year 2011-2012[242].

The NCT of Delhi is a Union Territory with a special status, as it has both a Legislative Assembly and a Council of Ministers (commonly referred to as the Government of the National Capital Territory of Delhi, GNCTD) headed by a Chief Minister[243]. The Delhi Parliament is entrusted with the power to enact laws in the same areas as States, with exception of public

[238] GoI, Census 2011 – Provisional population totals NCT Delhi, Introductory note, p. 12.

[239] As per the 2001 Census, 93% of the population lived in urban areas, whereas only 7% lived in rural areas.

[240] GoI, Census 2011.

[241] GoI, 2002, p. 3.

[242] Economic Survey of Delhi 2012-2013, p. 3.

[243] Article 239A of the Indian Constitution.

order, police and land[244]. The Central government thus still controls the Delhi police force; and the land, planning and development of the city remain within the purview of a central governmental body, the Delhi Development Agency (DDA). For these reasons, Delhi – although constitutionally a UT – is sometimes depicted as a State without full statehood. The entire geographical territory of Delhi is divided into three statutory towns: the Municipal Corporation of Delhi comprising 272 wards, the Delhi Cantonment Board assembling 8 wards and the New Delhi Municipal Committee that is not divided into wards[245].

a. Complex institutional structure

As "Delhi sits at the intersection of local, state and national governments"[246], its institutional design is a complex one to comprehend. Within the labyrinth of service provider agencies in the Indian capital, four are of particular relevance for our investigation: the Delhi Development Authority, the Municipal Corporation of Delhi, the Delhi Jal Board and the Delhi Urban Shelter Improvement Board.

The Delhi Development Authority (DDA) was created in 1957[247], at a time of large inflows of migrants from Pakistan and a corresponding need for efficient urban planning in Delhi. Its key responsibility is to develop and implement the statutory binding Master Plan for the whole territory of the NCT of Delhi. The last version of the Master Plan (MP) was published in 2001 and targeted its goals towards 2021. The DDA is also a developmental agency, responsible for the implementation of housing projects[248]. As of April 2014, the agency owned 90.326 acres of land, which represents 25 % of the city's total area[249]. The Chairman of the DDA is the Lieutenant Governor (him/herself nominated by the President of India[250]), and a vice-chairman is appointed by the Central Government[251].

[244] Article 239A and the Seventh Schedule (entry 1, 2 and 18) of the Indian Constitution.

[245] GoI, Census 2011 – Provisional population totals NCT Delhi, Introductory note, p. 11.

[246] Sh. Sheikh & B. Mandelkern, 2014, p. 2.

[247] Delhi Development Authority Act of 27 December 1957.

[248] J. Ruet *et al.,* p. 31.

[249] Sh. Sheikh & B. Mandelkern, 2014, p. 5.

[250] Article 239 of the Indian Constitution.

[251] Delhi Development Authority Act.of 27 December 1957, section 3(3).

The Municipal Corporation of Delhi was also set up in 1957 through the enactment of an Act by the Indian Parliament[252]; it is entrusted with providing urban basic services to areas under its jurisdiction. Incumbent on the Corporation are the, *inter alia*, "construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences, (…) the lighting, watering and cleansing of public streets and other public places"[253]. The Commissioner of the Corporation is appointed by the Central Government[254]. Since 1962, a slum and JJ cluster Department was created as part of the MCD (the "slum wing"). The Department was charged with the implementation of the provisions of the Slum Areas (Improvement & Clearance) Act of 1956, and hence, the power of formally notifying an area as a "slum" (*Cfr. Infra*). The slum wing got transferred back and forth between the MCD and the DDA until it was finally subsumed under the Delhi Urban Shelter Improvement Board (DUSIB) in 2010[255].

The Delhi Jal Board (DJB) is responsible for providing water supply and sewerage services to areas under the jurisdiction of the MCD[256]. The DJB was constituted by an Act of 1998[257] that entitled the Board to more extensive power and autonomy compared to its ancestor, the Delhi Water Supply and Sewerage Undertaking. For instance, the DJB may devolve some of its tasks to private bodies[258] and enjoys enhanced freedom with regard to tariff policy[259]. Nevertheless, the DJB's autonomy is limited. For example, the decision to introduce private participation within the water and sewerage system must get prior approval from the State government.

The Delhi Urban Shelter Improvement Board (DUSIB) is the nodal administering body for implementing schemes aiming at habitat improvement for the urban poor in Delhi[260]. It was

[252] Municipal Corporation of Delhi Act & New Delhi Municipal Corporation Act of 1957.

[253] *Ibidem,* section 42(a) & (o).

[254] *Ibidem,* section 54.

[255] Sh. Sheikh & S. Banda, 2014, p. 2.

[256] Both the Delhi Cantonment Board and the New Delhi Municipal Committee are responsible for distribution of water within their constituencies; the DJB only provides treated water supply in bulk to those territories.

[257] Delhi Jal Board Act of 1998.

[258] *Ibidem,* section 9(2).

[259] J. Ruet *et al.,* p. 31.

[260] G. Ranjan Panda & T. Agarwala, 2012, footnote n° 11.

created under the DUSIB Act of 2010. Like the slum wing of the MCD, the Board is empowered with implementing the provisions of the Slum Areas (Improvement and Clearance) Act of 1956[261]. The chairperson is the Chief Minister of Delhi[262]. This body can therefore be classified as a State government agency. This freshly born institution exercises extensive powers with regard to slum eviction, resettlement and slum improvement (*Cfr. Infra*).

Nevertheless, the powers of the DUSIB must not be overestimated. As per the policy of the Delhi government, the ownership of the land determines the evicting body. This means that the landowner – be it the Central government agencies or other Land Owning Agencies (LOAs), e.g. the Land and Development Office – has to carry out and bear the cost of the eviction and relocation process[263]. Although the landowner body can entrust the DUSIB (or the slum department of the MCD previously) with relocation/rehabilitation operations, experience has shown that the LOAs usually undertake operations unilaterally[264]. Nevertheless, most of these LOAs, such as the DDA, are not *per se* slum rehabilitation agencies. In such circumstances, the approaches towards slums have been "sporadic and not part of an overall strategy"[265].

This brief overview of the institutions involved for urban governance and service delivery in Delhi demonstrates that they did not develop in an organic way, but are rather characterised by "fragmentation of authorities and multiplicity of power centres"[266]. As a result, a lot of overlap comes about: the concurrent powers of the DJB (construction and maintenance of sewer lines) and the DUSIB (construction and maintenance of public toilets) with regard to sanitation for instance. Overlapping responsibilities are not necessarily problematic if accompanied by efficient collaboration between the institutions concerned. Unfortunately, the institutional arrangements in Delhi are not geared toward collaboration. Lastly, we have observed that Delhi has been the scene of a power struggle between the Delhi and the Central governments. Being the capital, the Union wants to keep its influence on its development. While there is a Delhi Legislative Assembly empowered to enact laws on urban planning and set up

[261] DUSIB Act of 2010, section 3(2).

[262] *Ibidem,* section 3(4).

[263]GNCTD, 2013(c), section 1.

[264] Sh. Sheikh and S. Banda, 2014, p. 10.

[265] GoI, 2015, p. 1.

[266] WaterAid India, 2005, p. 34.

institutions (such as the DUSIB), the Ministry of Urban Development, under the cover of the DDA and through the implementation of the Master Plans and land use regulation, still pulls the strings of urban development in Delhi[267].

b. Typology of informal settlements in Delhi

As per the 2001 Census, 415.637 households were living in slums in the NCT of Delhi, which amounts to 2.029.755 people. The number of slum dwellers represented 15,7 % of the total urban population. In 2011, the Census (provisional figures) revealed that the number of households and people living in slums had decreased to 367.893 and 1.785.390 respectively, which thus now represents 14,6% of the total urban households[268]. The total land occupied by those slums would be less than 10 sq.km., covering less than 3% of the total residential area in Delhi[269]. The distribution of land on which slums (JJ clusters in particular) have been erected according to the LOA is illustrated in the table below. The three levels of power are very well represented, with the Central government nevertheless owning the largest share of land. According to the DUSIB's list, no JJ clusters have been constructed on private land in Delhi.

Land-Owning Agencies of JJCs in Delhi

Level of Government	Land-owning Agencies	Percent of All JJC Land Area in Delhi	Percent of JJCs in Delhi
Central	DDA, Railways, CPWD, L&DO, Cantonment Board	63	67
State	DUSIB, PWD, Forest, Revenue, DJB, Flood Control Department	32	23
Local	MCD, NDMC	5	10

Source: DUSIB's List of 685 JJCs in Delhi, 2011

There are seven different types of unplanned settlement to be found in Delhi: the JJ clusters, the slum designated areas, the resettlement colonies, the unauthorised colonies, the regularised un-authorised colonies, the rural villages and the urban villages. In the year 2000, the total urban population was divided within the eight types of settlements as enumerated in

[267] *Ibidem*, p. 34.

[268] This decrease might be due to the definition change of "slum" in the 2011 Census (*Cfr. Infra*).

[269] A. Kundu, 2004, p. 267.

the table below[270]. We can see that slum designated areas represented about 31% of the total urban population; JJ clusters 24% and resettlement colonies 20%.

TYPE OF SETTLEMENT & POPULATION

S. No	Type of settlement	Approx. Population in lakh (2000)
1	J.J. Clusters	20.72
2	Slum Designated Areas	26.64
3	Unauthorised Colonies	7.40
4	Resettlement Colonies	17.76
5	Rural Villages	7.40
6	Regularised-Unauthorised Colonies	17.76
7	Urban Villages	8.88
8	Planned Colonies	33.08

Source : DUEIIP-2021

We will focus below solely on slum designated areas, JJ clusters and resettlement colonies[271].

"Slum designated areas" are formally notified as slums under the Slum (Clearance and Resettlement) Act of 1956. In Delhi, the competent authority to notify a slum area was the Director of the Slum and JJ Department of the Municipal Corporation of Delhi (*Cfr. Infra*). The last notification was done in April 1994. Most of the slum designated areas are situated in the "walled city", heritage site in old Delhi, the walled city extension and some small parts of East Delhi[272]. There is no slum designated area on public-owned land.

The JJ clusters – otherwise referred to as "slums", "squatter settlements", "basti" or "hutments" – are illegal occupations of (public or private) lands where building activities have taken place with disregard for/in total violation of development regulations[273]. Aside from the precariousness of the occupancy status, these settlements are marked by the physical precariousness of the housing. Under the DUSIB Act of 2010, the Board may declare a group of *jhuggies*[274] as being a "jhuggi jhopri basti" based on the following factors: "(i) the group of

[270] Delhi Economic Survey 2001-2002, p. 129.

[271] For further information on the different types of informal settlements, see: B. Banerjee, 2011, pp. 45-46.

[272] R. Gupta, 2012.

[273] B. Banerjee, 2011, pp. 45-46.

[274] For the purpose of the Act, a *jhuggi* is defined as a "structure whether temporary or *pucca*, of whatever material made, with the following characteristics: (i) it is built for residential purpose; (ii) its location is not in conformity with the land use of the Delhi Master Plan; (iii) it is not duly authorized by the local authority having

jhuggis is unfit for human habitation; (ii) it, by reason of dilapidation, overcrowding, faulty arrangement and design of such *jhuggis*, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, is detrimental to safety, health or hygiene; and (iii) it is inhabited at least by fifty households as existing on 31st March, 2002"[275]. Except for the inclusion of a cut-off date, the definition is a carbon copy of the one provided for in the Slum Act of 1956.

JJ clusters in themselves were already present since the inception of the city[276]. The DDA further explains their creation by the fact that "there was a time lag between the land acquisition and implementation of the developmental projects", where "large tracts of empty land got encroached by way of slums"[277]. Yet, one can argue that the DDA might have prevented the tremendous growth of informal settlements by fulfilling its mandate to provide adequate and affordable housing for a rapidly growing city[278]. It is indeed the failure to properly implement the Master Plan that must be viewed as the main explanation for slum proliferation in the capital[279]. The original and revised versions of the Master Plan reserved 25% of the housing stock to Economically Weaker Sections (EWS), but the DDA lamentably failed in providing this housing supply[280].

There are currently 672 JJ clusters listed on the DUSIB website[281]. It is worth noting that over 80 % of the land occupied by the JJ clusters belongs to the DDA[282].

Resettlement colonies – officially referred to as *jhuggi jhopri* resettlement colonies – are composed of city-dwellers that, in the process of city-beautification or other development projects, have been evicted from their dwellings in inner-city areas. Relocated from their previous JJ clusters to the periphery of the city, these inhabitants are highly vulnerable due to

jurisdiction" (DUSIB Act of 2010, section 2(f)).

[275] *Ibidem*, section 2(g).

[276] Economic Survey of Delhi 2012-2013, p. 196.

[277] GoI, 2015, p. 1.

[278] Sh. Sheikh & B. Mandelkern, 2014, p. 4.

[279] See further about the "Master Plan implementation backlog": G. D. Verma, 2002 & U. Ramanathan, 2006.

[280] GoI, 2002.

[281] See: http://delhishelterboard.in/main/?page_id=3644 (consulted on 13 July 2015).

[282] GNCTD, 2006, p. 6-6.

their economic displacement[283]. As opposed to JJ clusters, "[resettlement colonies] are explicitly included within the development area of the master plan in a zone marked for residential use"[284]. Yet, they are not categorised as a "planned settlement" by the Delhi Government. In August 2014, the number of resettlement colonies was estimated at 55 in Delhi[285].

c. Slum governance since 1990

At the end of the 90s, India entered into the era of liberalization and opening up of the economy. In such a context, the urban space devoted to slums in "global cities" shrunk massively. Illustrative thereof is the goal to turn Delhi into a "slum free city" with a "world class" look, through "slum clearance" and "rehabilitation" which gained more and more importance at the political level[286]. This is echoed in the Delhi Master Plan 2021 that envisions making Delhi a "global metropolis and a world-class city".

This change in narrative for slum governance translated into heavy human and social costs of slum demolition. Between 1990 and 2007, the city undertook the construction of mega infrastructure projects, such as the metro railway, in preparation for hosting the 2010 Commonwealth Games[287]. In order to attract investors and "to dispel most visitors' first impression that India is a country soaked in poverty"[288], massive demolition and relocation of JJ clusters took place. According to a list established by the slum department of the MCD, 217 JJ clusters were demolished and relocated between 1990 and 2007[289]. It is important to note that this number does not encompass the number of evictions where no alternative arrangements were provided due to failure to meet the eligibility criteria. Other studies reveal the displacement of 64.910 families during the same period[290].

[283] WaterAid India, 2005, p. 29.

[284] G. Bhan, 2013, p. 13.

[285] Sh. Sheikh *et al.,* 2014, p. 2.

[286] A. Ghertner, 2011, p. 282. See for instance, the Minister of Tourism, who for his recurrent emphasis on "slum clearance", came to be referred to as "Demolition Man".

[287] For a comprehensive report on the "demolition drive" prior to the Commonwealth Games see: HLRN, 2011.

[288] Ramesh, 2008.

[289] GoI, 2010.

[290] G. Bhan, & S. Shivanand, 2013, p. 56

In 1990-1991, the Government of Delhi started implementing the three-pronged strategy under the Slum (Clearance and Removal) Act for dealing with the problem of JJ clusters[291]. The first prong of this strategy entails the relocation of JJ households to be carried out for only those clusters that are required by the LOA for projects of "larger public interest". Past encroachments which had been in existence prior to 31/01/90 cannot be removed without providing alternative arrangements[292]. Furthermore, the granting of plots on a freehold basis to JJ dwellers at the relocation site has been agreed to in principle by the Delhi Government[293]. Beneficiaries should contribute up to 7000/9000 Rs. Under the second prong, the JJ clusters whose encroached land pockets are not required by the concerned LOAs for another 15 to 20 years for any project implementation have to be upgraded *in situ.* Lastly, all JJ clusters – irrespective of the status of the encroached land – have to be improved to further enjoyment of minimum basic civic amenities for community use under the EIUS scheme[294]. Although limited, inhabitants of JJ clusters were thus provided with prospects for improvement of their living conditions and a resettlement scheme in case of eviction.

However, this three-pronged strategy was never fully implemented as it was undermined by judicial pronouncements of the highest Courts. Illustrative thereof is the *Lawyers Co-operative group housing society vs. Union of India and others*[295] case where the Delhi High Court expressed its concern for "the public exchequer (…) to be burdened with crores of rupees for providing alternative accommodation to *jhuggis* dwellers who are trespassers on public land". After weighting up the pros and cons, the Court ordered rehabilitation on a *license* basis, instead of leaseholds rights basis as the Commissioner of the MCD intended[296].

[291] GNCTD, 2006, p. 6-10

[292] Paraphrasing GNCTD, 2006, pp. 7-8.

[293] *Okhla Factory Owners' Association vs. GNCTD* (Delhi High Court 2002), para. 11.

[294] For example: Pay and Use Jansuvidha Complexes containing toilets and baths and also the introduction of mobile toilet vans in the JJ clusters are envisioned (GNCTD, 2006, p. 9).

[295] *Lawyers Co-operative group housing society v. Union of India and others* (Delhi High Court, 1993).

[296] The Commissioner of the MCD indeed justified the leasehold system on the basis that it "has the advantage of providing a general sense of security to the urban poor beneficiaries; in addition the beneficiaries can obtain shelter loan from financial institutions. (…) On the other hand, the license fee system is working against the National Housing Policy, that lays stress on tenurial rights; it is an anti-poor policy that treats urban poor as second class citizens" (cited from V. Dupont & U. Ramanathan, 2009, p. 327).

Even more significant is the jurisprudence of both the Supreme Court and the Delhi High Court that upholds the city beautification agenda in PIL cases brought to them by various resident welfare associations. In the aforementioned *Almitra Patel* judgment, the Supreme Court definitely paved the way for endorsing the role of the capital as a "showpiece" of its country, and established the primary task of the governmental agencies to "clean up the city". In the same vein as the *Pitam Pura Sudhar Samiti vs Union Of India* judgment (*Cfr. Supra*), the Delhi High Court recalls its assigned mission to "help to make Delhi a more livable place and ease the problems of the residents of this town who undoubtedly suffer and are harassed as a consequence of this encroachment on public land"[297].

After the *Lawyers Co-operative group housing society* case, the next moment of jeopardy for the resettlement scheme of evicted slum dwellers materialized itself in a few words, when the Supreme Court claimed that "rewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket"[298]. The Delhi High Court in the *Okhla Factory Owners' Association* case then completely struck down the government resettlement policy. There, the Court acknowledges that "it is undoubtedly the duty of the Government authorities to provide shelter to the under-privileged", but such a goal, the Court argues, will be achieved by using economic criteria for the allotment of plots, rather than using the arbitrary criteria of squatting on public land. Based upon the arbitrariness of the scheme, the judges ordered that (a) "encroachers and squatters on public land should be removed expeditiously without any pre-requisite requirement of providing them alternative sites before such encroachment is removed or cleared" and (b) "no alternative sites are to be provided in future for removal of persons who are squatting on public land"[299].

In a nutshell, the intervention of the judiciary in urban governance has reinforced the "perception of slum dwellers as squatters, culprits of encroachment, without recognizing them as victims of the failure of housing policy and urban development"[300].

[297] *Okhla Factory Owners' Association vs. GNCTD* (Delhi High Court 2002), para. 50.

[298] *Almrita H. Patel vs. Union of India* (Supreme Court 2000), para. 14.

[299] *Okhla Factory Owners' Association vs. GNCTD* (Delhi High Court 2002), operating para. 7-8.

[300] V. Dupont & U. Ramanathan, 2009, p. 313.

Economically Weak Sections (EWS) & Low-Income Groups (LIG)

EWS and LIG are the last fringes of the Indian society, supposedly the most vulnerable. Classification is based upon income ceilings (annual HH income up to 1 lakh Rs. => EWS, 1-2 lakh Rs. => LIG)

Since the years 2006-2007, the face of slum governance in Delhi has changed gradually. Firstly, a steady decrease in the number of evictions has been recorded from that time on[301]. Also the narrative for dealing with slums has shifted from "slum clearance" towards "inclusive city development" (JNNURM) and "whole city approach towards informal settlement" (RAY). The aim of creating "slum-free cities" is still present, but is rather approached from the preventive side of creating affordable housing stock for EWS & LIG. The year 2010 is then revolutionary, with several achievements in terms of slum dweller protection.

Firstly, the enactment of the DUSIB Act in 2010 is of significant importance. The Act granted legislative recognition of the very existence of more than hundred informal settlements[302]. Settlements on public-owned land had previously fallen through the net of formal slum notification and had existed in the city for decades at the margin of formal regular housing sector and invisible for urban planning.

The Act further bestowed the DUSIB with extensive powers with regard to JJ clusters. First, the power to survey lies in its hands and this is significant as "such data [collection] are a key factor in deciding whether a given resident is eligible for the benefits of the rehabilitation at hand"[303]. The Board then has the power to prepare a scheme for the removal of any *jhuggi jhopri*, "and the consent of the residents of the *jhuggi jhompri basti* shall not be required for the

[301] In 2007 "only" 3 cases of evictions are recorded, with 240 households being relocated. This number gradually decreased since then (G. Bhan, & S. Shivanand, 2013, p. 56).

[302] See the DUSIB website with the list and details of JJ clusters in the city (available at: http://delhishelterboard.in/main/?page_id=3644, consulted on 13 July 2015).

[303] Sh. Sheikh and S. Banda, 2014, p. 4.

preparation or implementation of such a scheme"[304]. Such a scheme shall define the criteria for eligibility for resettlement of evicted slum dwellers. Removal can also be decided as a result of a redevelopment scheme[305]. The DUSIB can require the local police to give assistance during the removal operations[306]. Similarly to its discretionary power to instigate removals, the Board enjoys the capacity to prepare a housing scheme for the resettlement of persons that have been evicted and are entitled to resettlement[307]. Finally, and for such slums that are not to be cleared, the Board may prepare a scheme for improvement, which may include the provision of toilets and bathing facilities, improvement of drainage, provision of water supply, street paving and lightning, and provision of dustbins, or sites for garbage collection, etc[308].

Later in 2010 the Delhi High Court issued two judgments of significant importance for raising the level of protection against arbitrary evictions of slum dwellers (*Cfr. Infra*). In *Sudama Singh and Others vs. Government of Delhi and others*, the High Court re-affirmed principles and guidelines that have to be abided by the evicting body throughout the whole process. The Court firstly recalls that the logic underpinning these directives is to ensure that the forcibly evicted and relocated *jhuggi* dweller is not worse off than before the eviction[309].

In light of the "bundle of rights" at risk during evictions, the need of due process to be carried out before evictions is underlined by the judges. Consultation with the affected families must occur in a "meaningful manner" in order to determine eligibility for rehabilitation and relocation under the "cut-off" date. Finally, the State authorities must identify empty plots equipped in terms of infrastructure with the civic amenities that can ensure a decent standard of living for those being relocated *prior* to initiating the moves for eviction[310]. As a matter of fact, the Court expresses great concern with regard to the inadequacy of the resettlement sites, especially the lack of basic amenities[311]. The obligation to rehabilitation must be properly

[304] DUSIB Act of 2010, section 10(1).

[305] *Ibidem*, section 12.

[306] *Ibidem*, section 10(3).

[307] *Ibidem*, section 21.

[308] *Ibidem*, section 11.

[309] *Sudama Singh and Others vs. Government of Delhi and others* (Delhi High Court, 2010), para. 57.

[310] *Ibidem*, para. 55.

[311] The Court indeed declared that "it is not uncommon that in the garb of evicting slums and 'beautifying' the city, the State agencies in fact end up creating more slums the only difference is that this time it is away from the

implemented before any task for forceful eviction of a *jhuggi* cluster is undertaken by the State agencies. This is later confirmed in the *PK Koul and Others vs. Estate Officer and Anr. and Others* judgment[312].

It is noteworthy that the use of a cut-off date to determine entitlement for resettlement after eviction was never questioned by the High Court. The concept of a cut-off date for the protection of irregular settlements entails substantive and procedural protection for those who can establish continuous residence in their dwelling since prior to the given date[313]. In the particular case of Delhi, the beneficiaries are entitled to resettlement (on a plot or in a flat) in the case of eviction or demolition. Although doubt may be cast upon the constitutionality of this cut-off date[314], the Court seemingly considers that it offers tangible advantages to slum dwellers' day-to-day vulnerability.

The abovementioned directives recently issued by the High Court are yet to be fully implemented at the policy level. Addressing the housing shortage under JNNURM, the GNCTD (through the DUSIB) has undertaken the construction of flats for the economically weak sections of the urban society. These flats are to be fitted with water and sanitation facilities. Although construction has proven difficult, by the end of 2013, more than 14.000 flats were ready for occupation by EWS[315]. The Delhi government is planning the building of an additional 27.000 flats in 2015[316]. The total number of flats under the JNNURM scheme will amount to roughly 50.000[317]. Flats are to be initially allotted on leasehold basis for 15 years,

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gaze of the city dwellers. The relocated sites are invariably 30-40 kilometers away from a city centre. The situation in these relocated sites, for instance in Narela and Bhawana, are deplorable. The lack of basic amenities like drinking water, water for bathing and washing, sanitation, lack of access to affordable public transport, lack of schools and health care sectors, compound the problem for a *jhuggi* dweller at the relocated site. The places of their livelihood invariably continue to be located within the city. Naturally, therefore, their lives are worse off after forced eviction" (*Ibidem*, para. 60).

[312] *P.K. Koul and Ors. vs. Estate Officer and Anr. and Ors.* (High Court of Delhi 2010), para. 172.

[313] Paraphrasing J. M. Hohmann, 2010, p. 162.

[314] See the author Dilip D'Souza's criticism of the arbitrariness of the cut-off date (D. D'Souza, 2005).

[315] Sh. Sheikh & S. Banda, 2014.

[316] X, "Delhi government to build 27.000 flats for EWS and LIG, *The Economic Times,* 27 March 2015.

[317] X, "Delhi government may sell off vacant EWS flats, stop further construction", *The Hindustan Times,* 7 June 2015.

and then converted into freehold[318]. The allotment of the flats already started in 2010 but eligibility criteria have proven to be exclusionary[319]. As of today, the conditions for relocation/rehabilitation are, *inter alia*, the following:

> "(i) The beneficiary JJ dweller must be a citizen of India and not less than 18 years of age;
>
> (ii) The JJ dweller should have been occupying the jhuggi on or before 4.6.2009;
>
> (iii) The JJ dweller cannot claim the allotment of a flat as a matter of right;
>
> (viii) In case of multi-storeyed jhuggie occupied by the same person or different persons for residential purpose, the allotment will be considered to the occupant of ground floor only;
>
> (ix) Allotment will be made in the joint-name of the husband and wife occupying the jhuggie;
>
> (xiv) The licensee shall use the flat for residential purpose only"[320].

In a first phase, 44 priority JJ clusters were identified for relocation/ rehabilitation[321]. In April 2014, 95 JJ clusters were included in the list[322]. The procedure for establishment of this priority list lacks transparency as "no information is available explaining how a JJ cluster is given priority over another"[323]. It is the LAOs that approach the DUSIB for the inclusion of certain JJ clusters in the priority list, and the DUSIB which decides to undertake the relocation/rehabilitation operations. In the light of "letters for prioritisation of JJ clusters" sent by LOAs[324], it seems that the DUSIB automatically includes the JJ clusters in the priority list, with little or no regard to the "larger public interest" justifying such relocation/rehabilitation. This disproportionate power allocated to LOAs potentially undermines the purpose of creating affordable housing stock for the urban poor.

d. Water supply and sanitary situation

Delhi's water sources consist of both surface and ground water. Supply from surface water – flowing from the Yamuna, Bhakra and Ganga rivers – represents more than 90% of the

[318] GoI, 2013(c), p. 3.

[319] It is estimated that around 50% of the evicted slum dwellers have been excluded from the resettlement policy (Sh. Sheikh & S. Banda, 2014(b)). Additionally, the DUSIB has recognized the flaws of the system: "sufficient number of persons did not become eligible for allotment as per the strict criteria and procedures in the guidelines" (GoI, 2013(c), p. 1)

[320] GoI, 2013(c), pp. 3-4.

[321] DUSIB website.

[322] Sh. Sheikh & S. Banda, 2014.

[323] Sh. Sheikh & S. Banda, 2014.

[324] GNCTD, 2011.

total supply[325]. Most of the surface water is treated at five plants spread throughout the city[326]. The table below shows the different sources of drinking water used by Delhi inhabitants. As per the 2011 Census (provisional figures), 81.3% of households in Delhi now have access to a piped water supply[327]. We can add that according to the DJB, about 73% of the Delhi population is connected to the sewer network[328].

DISTRIBUTION OF HOUSEHOLDS BY AVAILABILITY OF DRINKING WATER FACILITY & SOURCE IN DELHI

No	Source and Availability of Drinking Water	Households (%)
I.	**Sources**	
1.	**Piped Water Supply System**	**81.30**
	a. From Treated Source	75.20
	b. From Untreated Source	6.10
2.	Covered Well	0.10
3.	Hand pump	5.30
4.	Tube Well	8.40
5.	Tank, Pond, Lake	1.20
6.	Other Sources	3.70
II.	**Availability**	
1.	Within the Premises	78.40
2.	Near the Premises	15.40
3.	Away	6.20

Source: - Census of India, 2011, Houses, Household Amenities and Assets.

Although these figures represent a remarkable extension of coverage for basic services, it seems that provision deficiencies are unequally distributed among the Delhi inhabitants. This appears very clearly in a range of reports and statistical analyses.

First, Dr. A. K. Suscheela and other experts have explained that the city can be classified into five zones, depending upon the type of water supply[329]. In the table below, we can see that the quality, safety and availability of water decreases as we move up toward the fifth zone. It is regrettable that the research did not present a map with the geographical distribution of the different zones or provides a definition of the term "urban slums" (zone 5). Nevertheless, such distinctions in terms of the type of water supply source are very relevant for our research, as they offer some initial criteria from which to distinguish one urban settlement from another.

[325] The surface water resources is 940 Million Gallons per Day (MGD), and the groundwater resources 63 MGD (DJB, 2004, p. 6).

[326] DJB, 2004, p. 6.

[327] DJB website. Available at: http://www.delhi.gov.in/wps/wcm/connect/doit_djb/DJB/Home/About+Us

[328] *Ibidem.*

[329] A. K. Susheela *et al.*, 1996, p. 299.

Zone 1: Water is available from the tap 24 hrs per day and is treated water.

Zone 2: Water is rationed and is available for a total of approximately 6 hrs/day during morning, noon and evening.

Zone 3: As the water supplied by the Municipality is grossly inadequate for the population living in an area, tube well water is mixed with the Municipal supply in overhead tanks and this water is supplied through pipelines for a few hours during the day. Mixed water is invariably not tested for quality.

Zone 4: In peri-urban areas, tube well water stored in overhead tanks is supplied through pipelines, invariably not tested for quality, besides individual households dig their own tube wells with hand pumps as the Municipal supply is inadequate.

Zone 5: In the urban slums, there is no organized water supply as the water tankers provide water during certain hours of the day and the community has to collect and store water for the day's requirements. The slum dwellers dig shallow wells fitted with hand pumps and draw up subsoil water and animals and human beings live together in extremely unhygienic conditions. The concept of water quality testing does not prevail.

Second, one can link the source of drinking water to the (in)formal character of the housing. This is what Sajha Manch did (*Cfr*. Table below) and the results highlights the inequitable provision of water supply and sanitation facilities in the city. As we have seen before, the norms for the provision of water supply are different according to the source of drinking water (*Cfr. Supra* EIUS physical norms and the Manual on Water Supply and Treatment published by the Central Public Health and Environment Engineering Organisation). This *status quo* situation is compounded by the fact that the actual provision in the informal settlements is even lower than provided for in the norms.

Table 1: **Provision of Basic Services in varied settlements:**

Basic Services	**Norms for Formal Housing**	**Norms for Informal Housing**	**Actual Provision in Informal Settlements**
Water	363 lpcd Individual Supply	40 lpcd, 1 No. community stand post for 150 persons	30 lpcd
Sanitation	Individual toilets connected to city level sewerage system	Community toilets; one seat for 25 persons	One seat for 111 persons only 75 per cent with sewerage cover
Solid Waste Management	Household level collection	Deposit at nearest garbage point	44 per cent gap for all city

Source : *Report of a Convention, Sajha Manch, June 1999 and "Delhi Fact File, National Capital Region Planning Board, 1999*

One more recent piece of statistical analysis[330] further upholds the conclusion of the abovementioned research. The coverage percentage for piped water supply and sewer facility varies among the different types of settlements in the city. The *jhuggi jhompri* clusters are the worst off with 21.7% and 9.8% connected to the piped water supply and sewer system respectively.

Table 6.6: Water and Sanitation Status in the Unplanned Settlements (2004)

Service Provision in Unplanned Settlement	Piped Water Supply		Sewer Facility	
	Number	% of Colonies	Number	% of Colonies
Regularized Unauthorized colonies	557	98.2	458	80.7
Resettlement Colonies	44	100.0	44	100.0
JJ Clusters	158	21.7	72	9.8

Source: Slum Department, Municipal Corporation of Delhi, Delhi

Summing up the above studies, it seems uncontroversial to posit that the phenomenon of uneven coverage and disproportionate burden placed on marginalized communities[331] is prevalent in Delhi with regard to water supply and sanitation services in informal settlements. It is against the background of these findings that the analysis of the two case studies ought to take place.

Unequal coverage is no surprise given the wide discretionary power the DJB enjoys with regard to the extension of its piped water supply and sewerage network. According to the DJB's Citizens Charter, "any resident of Delhi – owner of premises/Tenant/Occupier – who has valid identity as proof of residence/ownership", can apply for water connection[332]. Requests for water connection to the DJB are further subject to, *inter alia*, the following conditions: the colony where the applicant resides should have been taken over by the DJB for water supply; piped supply water must be technically and legally feasible and there should be valid proof of residence (ration card, voter's identity card, etc.) or of ownership proof. With regard to sewerage connection, the DJB's Charter declares that "the sewer connection is sanctioned only in areas where sewerage services are available". Under such conditions we understand that an area not covered by the DJB water and sewer system, in which locality and legal status represent

[330] GNCTD, 2006, pp. 6-7.

[331] WaterAid India, 2011, p. 10.

[332] DJB's Citizen's Charter, available at: http://www.delhi.gov.in/wps/wcm/connect/doit_djb/DJB/Home/Citizens+Charter.

technical and legal difficulties has little chance of ever being connected to the piped water and sewerage network. Moreover, it is unclear whether the required residence or ownership proofs exclude inhabitants residing on public-owned land.

Lastly, in the water and sanitation landscape of the national capital, it is worth mentioning the "free water supply scheme" launched by the Aam Aadmi Party (AAP). First during its short office in 2014 and again in 2015, the AAP government headed by Chief Minister Arvind Kejriwal, promised to deliver free water to each household in the city[333]. Under this scheme, 666l daily/ 20.000l monthly will be free of charge for every household with a metered connection. Above this amount a water tariff will be charged. This policy has been depicted as constituting a "landmark" and a "big step towards the realisation of the fundamental right to water"[334]. However, one major criticism of the scheme is that it only covers households that get piped water supply, in other words excluding the ones relying on tankers or bore wells. Knowing that – based upon DJB's studies – about 81% of Delhi households are connected to the water supply network, the scheme is far from being a universal entitlement[335]. As a corrective measure, the government will purchase 250 tankers to provide free water for families not linked to the piped water network[336]. This *ad hoc* solution is most welcome, as long as it does not prevent the DJB from broadening the reach of its piped network.

[333] N. Lalchandani & R. Verma, "AAP govt announces 50% cut in power tariff; 20,000 litres of free water", *The Times of India*, 25 February 2015; X, "Delhi government slashes power tariffs by 50%; announces 20.000 litres free water", *The Economic Times*, 25 February 2015.

[334] Ph. Cullet, 2014, p. 6.

[335] Ph. Cullet, 2014, p. 6.

[336] X, "AAP govt. hikes water tariff by 10% for usage above 20.000l", *The Hindustan Times*, 29 March 2015.

CHAPTER II: URBAN POOR SETTLEMENTS

Two urban poor settlements in Delhi are now to be analysed to determine the extent to which land insecurity hinders the realisation of the human right to water and sanitation of its inhabitants. Safeda basti is a squatter settlement, established for more than 20 years on public land in a rather central location of the capital. Savda Ghevra is a resettlement colony, planned accordingly by public authorities, situated in the periphery of Delhi. An analysis of these two settlements will not give a full picture of the diversity of urban poor settlements in Delhi, but their particular and differentiated features will accurately present the challenges of accessibility to basic amenities for slum dwellers.

This case study is based on a combination of primary and secondary sources. The first tool consisted of interviews conducted in Savda Ghevra by a team of students of the National Law University, Delhi, in January and July 2014, as part of the "Users' trajectories in human rights law" project[337]. In addition to this, during a field trip in April 2015 we took stock of the situation in both settlements. The second set of sources consists of literature reviews, NGO reports and press articles about the specific colonies.

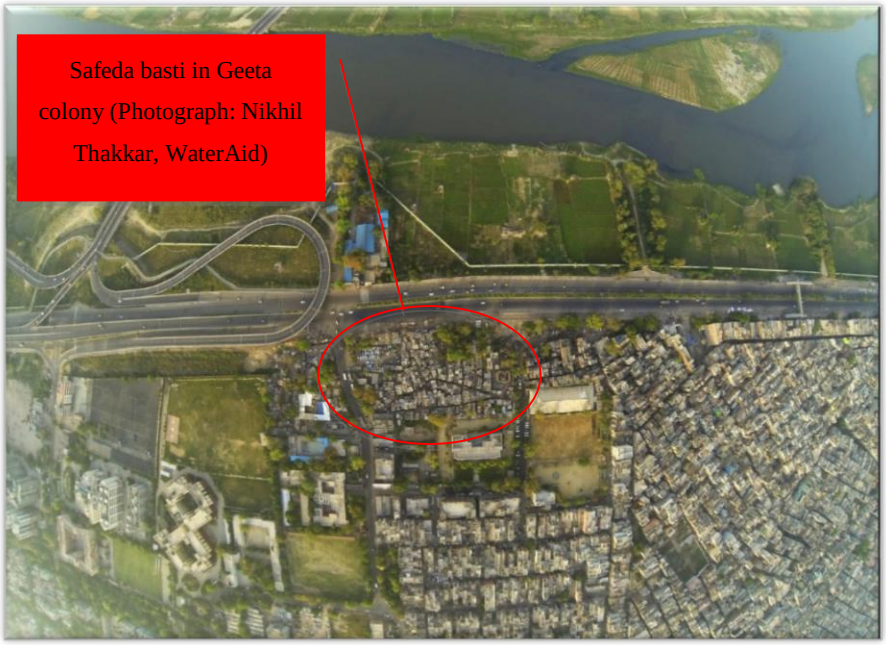
a. Safeda basti, an illegal enclave in the Geeta colony

Safeda basti is a JJ cluster of East Delhi, situated next to the Yamuna riverbank. According to the DUSIB's website, the colony is composed of 593 *jhuggies*[338], which represents about 3000 residents[339]. The 25-year old slum is constructed on land owned by the DDA.

[337] For further information about the research project, see: http://hrintegration.be/work-package/users'-trajectories-human-rights-law-uantwerp-ulb.

[338] DUSIB website.

[339] X, "The ingenious Delhi slum that scrapes without toilets", *The Guardian,* 24 June 2015.



Although surrounded by it, the basti is not connected to the water supply and sewerage network. The JJ cluster is indeed situated in the centre of the Geeta colony, home for middle-income families whose apartments are well connected to the DJB's piped water and sewerage system[340]. The settlement is also neighbour to several well-known institutes, such as the Ambedkar Institute of Advanced Communication Technologies, the St. Lawrence Convent and the Government Cricket Academy, which rely on the DJB's water supply and sewerage network. The only reason that explains the *basti*'s disconnection is the illegal character of the settlement[341].

***Ration cards** are delivered under the Public Distribution System, i.e. the subsidized food system in India.*

Land insecurity manifests itself in the colony by the fact that the inhabitants, although mostly owners of their dwellings, are not owners of the land on which they are situated. Informal arrangements, such as the issuance of the voters' card and ration card, then filled in the gap left by a lack of tenure security. This in turn lead to incremental upgrading of the

[340] See areas covered by the DJB: http://www.delhijalboard.nic.in/djbdocs/help_desk/mandawali.htm

[341] WaterAid India, 2015.

housing in response to growing feelings of tenure security[342]. As a result, 60% of the houses today are *pucca*, 30% semi-*pucca* and the modest remainder are *kutcha* housing[343].

There are eight public stand-posts for water in the *basti*, installed by the DJB[344]. Water is provided free of cost. Because there are pipelines supplying water to these stand-posts, the majority of the households along those lines (80-90% of HHs in the major streets) have been able to informally extend those to obtain a piped water source at the entrance of their dwelling. In the rest of the *basti,* no such informal extension is to be found.

[342] Anita has been living in the basti for more than 20 years. She explained the different steps of improvement works in her house. Those corresponded with the issuance of her ration card and voters' card by the public authorities (Interview with Anita, resident of Safeda basti, Delhi, 30 April 2015).

[343] Skype call with Prakhar Nigam, Centre for Urban and Regional Excellence, 26 June 2015.

[344] Skype call with Prakhar Nigam, Centre for Urban and Regional Excellence, 26 June 2015.

Informal pipeline extension, field survey 30 april 2015

There is only one community sanitation complex, separated into men's and women's compounds, each one provided with a bathing area and 11 pit latrines, open from 6am till 10pm[345]. The pay-for-use fee is 2Rs. for men, while women and children enjoy free use. Due to the restricted opening hours, limited financial resources and poor maintenance[346], many residents resort to open defecation on the banks of the neighbouring river[347]. A partnership between WaterAid, Cure and the DJB has resulted in 112 families now being connected to the sewerage system for the (multi-)household toilets that are under construction. Getting the DJB on board was a necessity, as "the participation of a government body in the process allayed the fears of the slum-dwellers of any imminent forcible eviction from the place by the authorities and they became much more forthcoming to invest in proper sanitary facilities"[348]. Notwithstanding the fact that this was precisely counter to the aim pursued by the public authorities (*Cfr. Infra*), the construction of the sewer and individual toilets has provided inhabitants with some security of tenure[349], which in turn, has driven forward the incentives for infrastructure investment.

The DJB had refused up to this point to extend the sewer network to this settlement because of its illegal status.

[345] Skype call with Prakhar Nigam, Centre for Urban and Regional Excellence, 26 June 2015.

[346] Broken seats and missing doors have been reported. (V. Bhatnagar, 2015).

[347] X, "The ingenious Delhi slum that scrapes without toilets", *The Guardian*, 24 June 2015.

[348]Ch. Rajanna & H. Qureshi, 2015.

[349] Interview with Renu Khosla, Director, Centre for Urban and Regional Excellence, Delhi, 24 April 2015.

The institution finally accepted to take part in a partnership with the NGOs on the condition that the sewerage connection would not provide inhabitants with *de facto* recognition of the legality of the settlement. In other words, the DJB and DDA, by cooperating in the extension of the sewerage network did not want to have their hand tied with regard to the potential eviction and resettlement of the settlement in the future[350].

One new sewer chamber, Photograph: Adam Ferguson/ WaterAid

Safeda basti is categorised as non-tenable by the DUSIB authorities[351], which means that it could be subject to the relocation/rehabilitation scheme. When asked about the allocation of flats for EWS undertaken by the DUSIB, Anita, resident for 22 years in the *basti*, answered that she would not want to move to any other place, in order to stay close to her sources of livelihood and her children's school, although better water and sanitation facilities were to be provided in the flats[352].

The case study of Safeda basti is a stark illustration of the ambiguous stance adopted by public institutions towards precarious slum settlements. On the one hand, service providers "omitted" to connect the dwellings in this settlement to the water and sanitation network for the mere reason of its illegal status. On the other hand, when engaging with the community towards improvement of the environmental and living conditions in the given area, the public

[350] Skype call with Prakhar Nigam, Centre for Urban and Regional Excellence, 26 June 2015.

[351] DUSIB website.

[352] Interview with Anita, resident of Safeda basti, Delhi, 30 April 2015.

institutions refuse to draw conclusions from it with regard to tenurial status. This ambiguity can give rise to a dangerous discrepancy between the expectations of the community and the actual intentions of the public authorities involved.

b. Savda Ghevra, or the story of marginalization

1) Profile

Savda Ghevra (SG) is a resettlement colony spread over 250 acres at the western periphery of Delhi. Created in 2006, it is composed of households evicted from various JJ clusters during the "demolition drive" anticipating the 2010 Commonwealth Games (*Cfr. Supra*). The number of habitants is estimated at 46.000 people[353] (more than 10.000 families[354]) distributed over 19 blocks[355]. The full potential of the accommodation is 20.000 households[356]. A third area is under construction for the development of 7.620 flats for EWS. Before the actual relocation, the land was sold to the Slum and JJ cluster Department of the MCD by the DDA, which owned the land[357]. Since 2010, the DUSIB has taken over the responsibility for the resettlement colony.

The socio-economic profile of the residents reveals their economic vulnerability. Sixty-one percent of the households earn 3000Rs. or less a month, which represents 100Rs. a day to spend. The majority of those working are daily labourers (60%), while a third have found self-employment within the community.

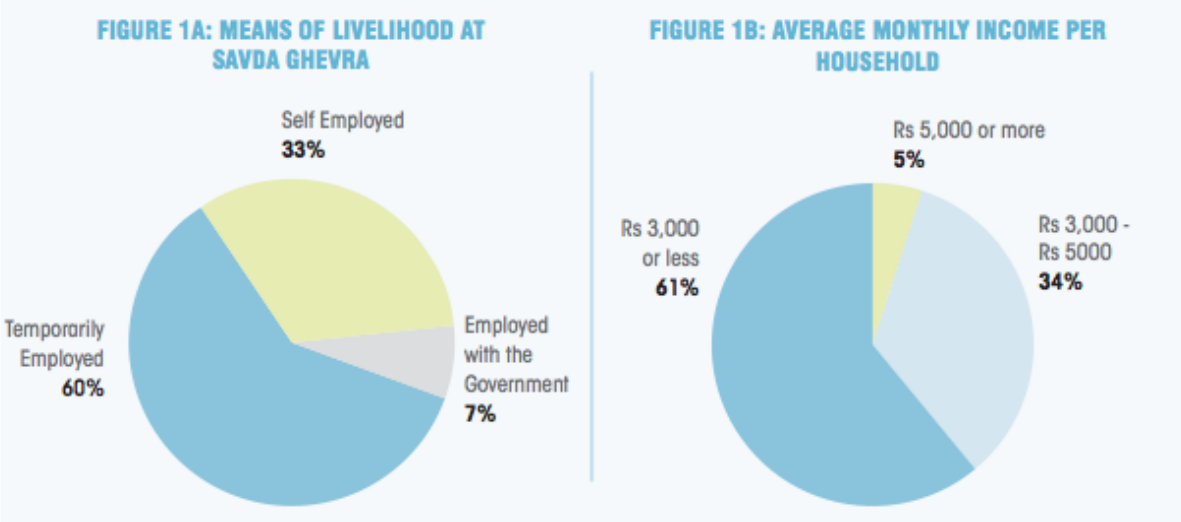
[353] R. Khosla & J. King, 2013.

[354] HLRN, 2014, p. 3.

[355] HLRN, 2014, p. 26.

[356] HLRN, 2014, p. 30.

[357] Sh. Sheikh, 2014, pp. 3-4.



(Source: HLRN, 2014, p. 12)

2) The eviction/relocation process

In a recent report, the Housing and Land Rights Network (HLRN) ensured that the human rights violations that characterise the evictions from various JJ clusters in the city and the relocation process in Savda Ghevra from 2006 to 2009 were well-documented[358]. We will leave aside further examination of the human rights breaches that occurred prior to and during the evictions, to focus below on the relocation process itself.

After eviction, eligible slum dwellers were allotted plots on the relocation site on the basis of two cut-off dates. Families able to prove occupation of the relevant JJ clusters prior to 31 January 1990 were allotted a 18 sq. m. plot, while those proving occupation between 31 January 1990 and 31 December 1998 received a 12.5 sq. m. plot[359]. Proof of residence was to be delivered on the basis of the ration card. Eligible slum dwellers were to pay an allocation fee of 7000 Rs. for the plot. The JJ dwellers who did not fulfil the eligibility criteria would not be entitled to any resettlement after the demolition of their dwelling.

Except for the allocation of plots, the evicted slum dwellers did not get anything. According to testimony of the first settlers, "(Savda Ghevra) was a barren land strewn with dried remains of a mustard field, completely devoid of any housing or infrastructure such as roads, water, electricity and sanitation"[360]. Another 8-year resident explained that "when I came here there

[358] HLRN, 2014.

[359] HLRN, 2014, p. 31.

[360] HLRN, 2014, p. 7.

was absolutely nothing. There was only a jungle"[361]. Without any assistance from State agencies, the new habitants had to build houses and organise the settlement themselves. This has resulted in a diverse range of "self-built-poor-quality housing"[362], ranging from *kutcha*, semi-*pucca* to multistore-*pucca* houses[363].

The relocation site is situated "at the fringe" of the city, "away from civilisation"[364]. Evicted city dwellers have been relocated 30-40 km from their original place of residence and work (*Cfr.* map below)[365]. This caused unemployment for many, especially women[366]. Aside from a drop in livelihood opportunities[367], this marginalization has also led to higher likelihood of disconnection from the water supply and sewerage system (*Cfr. Infra*).

[361] National Law University (NLU), interview code SG CR2, 13 January 2013.

[362] J. King, 2012.

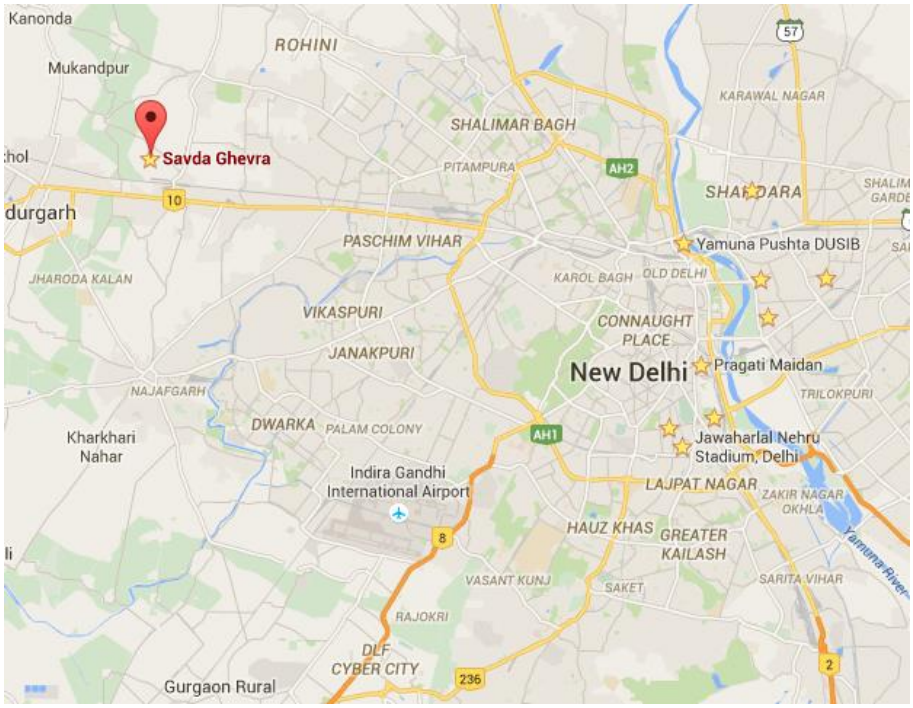
[363] Estimates tell that 20% inhabitants reside in *kutcha* houses, 31% in semi-*pucca* houses and the rest in *pucca*'s (J. King, 2012).

[364] NLU, interview code SG AR3, 13 January 2014.

[365] HLRN, 2014, p. 41.

[366] Sh. Sheikh, 2008, p. 54.

[367] See for instance, an inhabitant telling the interviewer: "we are not happy with the resettlement. We were satisfied and very happy with the earlier colony. There were good employment opportunities. It had factories nearby. After coming here, we have to travel a lot for work. We reach home late at 10/11 p.m. every day" (NLU, interview code SG_R15, 13 January 2014).



Savda Ghevra is situated at 30-40km from original sites: Karkardooma, Lodhi Road, Nizamuddin, Geeta Colony, Dilshad Garden, Khan Market, Yamuna Pushta, Pragati Maidan and Jawaharlal Nehru Stadium. The furthest JJ cluster, Lakshmi Nagar, is 44 km away. (Source: Googlemaps)

3) Tenure rights

The new inhabitants of Savda Ghevra were allotted plots on a time-bound lease basis. Ownership remains with the State, leasehold on the land being granted for a period of 10 years to those living there. This means that for the vast majority of the residents of SG the lease, unless renewed or turned into freehold, will expire in 2016. According to the HLRN, many inhabitants have expressed fears that their leasehold will not be renewed and this has "prevented them from investing in their homes by compromising on the material and quality of construction"[368]. This is upheld by the findings of the architect J. King who explains that, based on interviews with the residents, "the massive financial losses during the process of resettlement, the high personal cost required to build a multi-storey *pucca* house, short-term leases and the lack of jobs due to its peripheral location are all cited as reasons for [undeveloped housing stock]" in the colony[369].

[368] HLRN, 2014, p. 30.

[369] J. King, 2012.

The conditionality of the lease resides in the fact that beneficiaries have to, *inter alia*, build a permanent brick structure on the plot within three months of it being allotted. If residents fail to do so, their plots will be cancelled.

4) Level of access to basic services

Despite incremental self-improvement, the current living conditions in the resettlement colony are very harsh. Numerous inhabitants have described better access to basic amenities before eviction. From group discussions it transpires that life was easier before shifting to SG, statements such as "since we have come here we have done nothing except facing difficulties"[370] are prevalent.

The settlement is not connected to the city's piped water supply system. DJB tankers come every day for the residents to fill up containers for drinking water. The system is provided free of charge. Very few respondents reported water contamination[371], those who did would use chlorine tablets or boil the water before drinking it[372]. With regard to quantity, each family usually gets 1-2 buckets of 20l every day. It is considered sufficient thanks to the residents' capacity to adapt ("we make ourselves adjust to the amount of water that we have"[373]). However, water scarcity is acute during the summer[374]. There is no fixed time for the water tankers to arrive[375] and someone needs to stay at home and collect the water[376]. There is not enough solidarity for inhabitants to rely on their neighbours to get the daily water supply.

[370] NLU, interview code SG AR3, 13 January 2014.

[371] "Earlier there used to be iron tankers, so they got rust and thus the water was contaminated but now they are using steel tankers, so the quality of water is better now" (NLU, interview code SG_R6, 13 January 2014) See also: "sometimes the lid of the tanker is open and we get suspicious of the quality because we cannot tell what fell in the water (NLU, interview code SG_R20, 13 January 2014).

[372] NLU, interview code SG CR4, 13 January 2014.

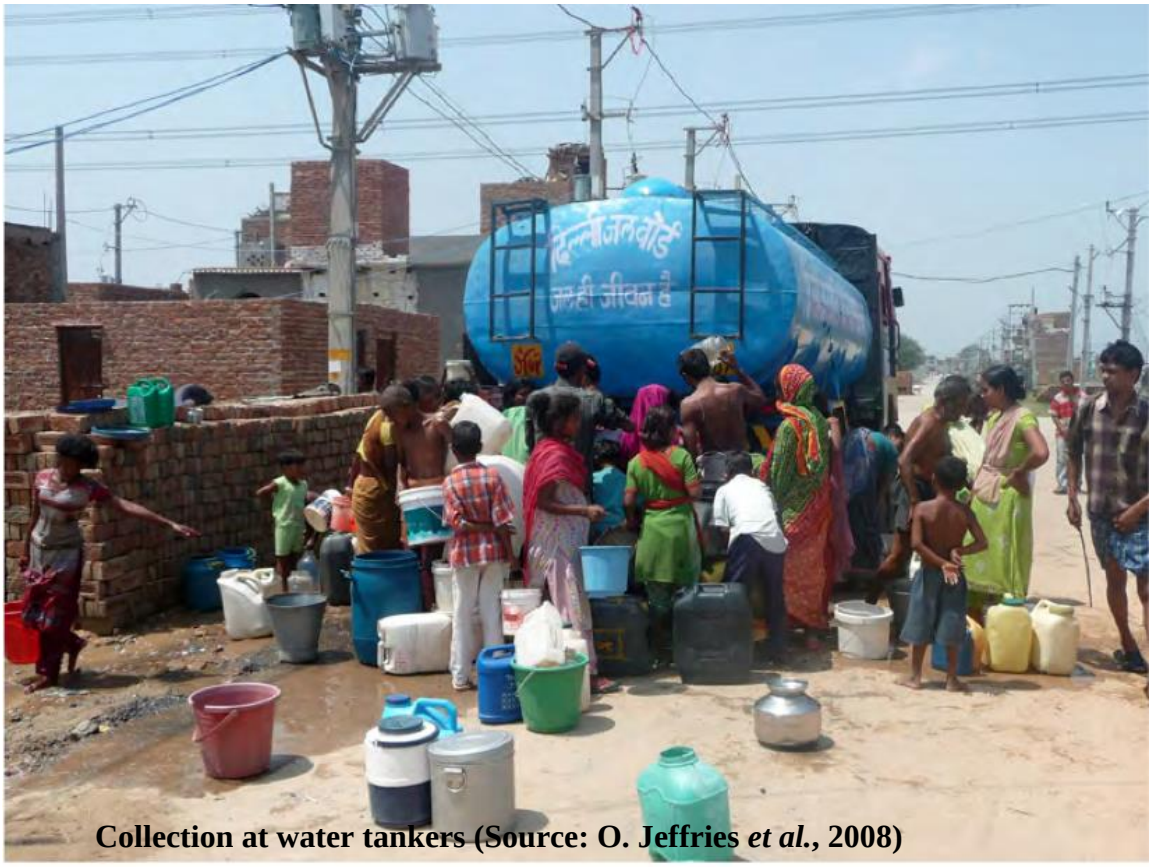
[373] NLU, interview code SG BR5, 13 January 2014.

[374] Water tankers not coming for six days in a row (NLU, interview code SG_R6, 13 January 2014)

[375] "Sometimes the tanker comes in the morning, sometimes at 7 in the evening and sometimes even at 4 in the afternoon or sometimes it will just pop in at 6 in the morning. You cannot say when it will come" (NLU, interview code SG CR2, 13 January 2014). Consequently, "because there is no fixed schedule for the tankers, residents organise their lives around water, with children often skipping school to collect water" (Ch. Cheikk *et al*., 2014, p. 7).

[376] NLU, interview code SG AR3 & SG CR5, 13 January 2014.

Several inhabitants have constructed bore wells to get water using a motor[377]. But that groundwater is saline, so is generally only used for washing and cleaning purposes.



Collection at water tankers (Source: O. Jeffries *et al.*, 2008)

[377] Cost of installation of the motor varies between 9.000 Rs. and 15.000 Rs.

Collection at water ATM, field survey 2 May 2015

In 2013, a private company installed water ATM's in the different blocks of the settlement[378]. Residents can buy a prepaid card of 100 Rs. for which they can access more than 333l of safe drinking water. Inhabitants do not usually use it as they have to pay, but it is considered an alternative solution in case of insufficient or unsafe water supplied from the DJB tankers[379].

Inhabitants who are aware of the 666l/day free water scheme (*Cfr. Supra*), also know about its intrinsic limitations. One resident explained that this scheme "is for people who own pipelines. [We] get water from tankers so it doesn't apply to us"[380]. Some residents added that "we don't even have a sewage pipeline so we cannot avail the benefit of Kejriwal's government. Only those who live in the city have the benefit"[381].

[378] The company is called "Sarjaval", literally "water for all". See: http://www.sarvajal.com

[379] Interview by Aadya Chawla, 28.08.2014, code: SG A1

[380] NLU, interview code SG CR4, 13 January 2013.

[381] NLU, interview code SG_BGD4, 14 January 2014.

Between 2006-2007, the MCD constructed Common Toilets Complexes (CTCs) in the resettlement colony. Each block now has its own. Th ese facilities follow the Sulabh Toilet Complex model, i.e. separate areas forwomen and men with the same number of latrine seats and a bathing cubicles in the centre[382]. No water is supplied inside the toilet area, but a hand water pump is available next to each complex[383]. These facilities are based on the twin-pit model[384], which is very convenient as the colony is not connected to the city's sewerage network. As the Operation and

Maintenance has not been organised by the MCD, some community members have taken up the role of caretakers of the facilities. These latter set up a pay-for-use fee of 2 Rs./person (children do not pay), and 5 Rs. for bathing[385]. The facilities are not appropriate (no lights, open from 5am to 11pm) and are poorly maintained; some of them are not even operational. As a result, very few people make use of them[386].

[382] Sh. Sheikh, 2008, Annexure 9.

[383] Sh. Sheikh, 2008, p. 53.

[384] The Twin-Pit model is based on the use of a pour flush toilet where *faeces* and urine are flushed and collected in alternate pits. After the water slowly infiltrating in the surrounding soil, the treated sludge dries up and can be removed manually from the pit and be used as soil amendment (E. Tilley *et al.,* 2008, p. 20).

[385] HLRN, 2014, p. 37.

[386] One inhabitant expressed its dismay "government toilets are just there for the sake of being. There is no person to clean or look after those and they are not clean at all" (NLU, interview code SG AR3, 13 January 2014).

The CTC and its caretaker, field survey 2 May 2015

Residents who had the space[387] and could afford it have constructed individual toilets with a septic tank under the house[388]. As a result of the poor maintenance of the CTCs and the associated user charges, added to the barriers for construction of household toilets, a large number of people have to resort to open defecation in the neighbouring forests[389].

The interviews report several instances of complaint to the DJB, but mainly in the summer season when there is no or not enough water supplied through the tankers[390]. The claims made are for inhabitants to get back what was provided to the settlement, i.e. water tankers, and not to urge for more than what they are provided, i.e. the extension of piped water supply.

[387] A lot of respondents points at space constraints as a hurdle for the construction of household toilets (NLU, interview code SG CR4, 13 January 2014).

[388] The septic tanks has to be emptied once or twice a year (cost varies between 500Rs and 700Rs).

[389] "Not one public toilet is functional; we all resort to going to the woods to defecate" (NLU, interview code SG_RGD1, 14 January 2014); "people have to go to the forests for defecating; who is going to use such bad toilets?" (NLU, interview code SG AR3, 14 January 2014).

[390] NLU, interview code: T SD 4, 13 January 2014.

Finally it is important to note that the main site roads have a tarmac finish and most of the block streets are paved with concrete bricks[391]. About 30% of the internal streets are paved.

5) Planned slum

Savda Ghevra is included in the formal planning of the city. The MCD specifically acquired land from the DDA in order to allot plots to resettle eligible slum dwellers. The area is earmarked for residential purposes in the MPD-2021 and the inhabitants have been granted leasehold rights on the land.

The development of the colony nevertheless indicates the contrary. The houses are self-built and do not answer to any building standards for safety or coherency purposes. Sanitation blocks were erected after the plots were allotted, which jeopardized their inclusion and centrality in the actual living space of the human settlement. For almost 10 years now, the DJB has opted for the most *ad hoc* solution with regard to water supply: water tankers. Disconnection from the piped water supply has led many residents to dig their own tube well which enhances the risks of water-borne diseases and depletes the groundwater sources. Roads have been paved without looking into the possibilities of laying down sanitation and sewerage pipelines. All in all, building infrastructure after the relocation caused disorganised and incomplete service delivery in the resettlement, meaning it resembles the JJ clusters it was meant to "rehabilitate"[392].

Inhabitants face numerous barriers to accessibility of basic services in the resettlement. The daily visits of the DJB tankers have no fixed timing, which prevent water bearers from planning their day accordingly. Families in which both parents work, cannot – unless they rely on their children – get the daily water supply. Although free of charge, a lot of indirect costs are incurred by the residents because of the minimal provision from the water tankers. The electricity costs of in-house motors installed to pump groundwater, the opportunity cost of the waiting and queuing time to receive one's share form the water tankers are all to be borne by Savda Ghevra's residents. Sanitation needs also involve costs: the pay-for-use fee at the community sanitation complexes, the construction of individual toilets and the emptying of septic tanks. Aggregated, these costs constitute a heavy burden on the inhabitants' limited resources.

[391] O. Jeffries, 2008.

[392] Sh. Sheikh *et al.*, 2014, p. 2.

The living conditions and piecemeal development of Savda Ghevra blur the lines between the informal and the formal character of a settlement in the city. Despite planning, inhabitants remain subject to high vulnerability that marks informality in the housing sector. As a matter of fact, and as mentioned earlier, the resettlement colony is categorised as "unplanned" by the GNCTD[393]. This ambiguous categorisation, some scholars argue, "may be a tacit recognition on the part of the government that even though they are 'planned' (…), many resettlement colonies have not been provided with basic services and are in many ways being overtaken by informal arrangements"[394].

The slum-like characteristics of the resettlement colony, despite its planning, lead to its depiction as a "planned slum" in the literature[395]. The phenomenon of "planned slums" itself is recognized in the MPD-2021 when it provides that:

> "In cases of relocation, the sites should be identified with a view to develop relatively small clusters in a manner that they can be integrated with the overall planned development of the area, particularly keeping in view the availability of employment avenues in the vicinity. Very large resettlement sites could lead to a phenomenon of planned slums".

The case of Savda, and the on-going construction of flats for EWS, is however a blatant failure to mingle different classes of citizens in the city.

[393] GNCTD, 2006 pp. 6-7.

[394] Sh. Sheikh *et al.,* 2014, p. 2.

[395] U. Ramanathan, 2009, p. 285; Sh. Sheikh *et al.,* 2014, p. 2. The architect G. D. Verma speaks about "planned crowding" when the Government allots plots of 12.5 sq. m. to a household, "and planned crowding, from the point of view of infrastructure and health, is no better than unplanned crowding in slums" (G. D. Verma, 2002, p. 87).

CHAPTER III: LESSONS LEARNED & APPRAISAL

The concept of a "slum" encompasses a wide range of degrees of land insecurity and service deficiencies. Different combinations of occupancy and physical precariousness are possible, and each specific irregular settlement is unique in this regard. Nevertheless, some patterns have emerged from the above analysis and we can now assert the existence of a linkage between occupancy insecurity and the realisation of the right to water and sanitation, especially with regard to accessibility. Access to basic services for the urban poor in Delhi is limited. While there are diverse factor affecting access, land insecurity is definitely one of them. This is not surprising inasmuch as we have seen the unequal coverage of basic services within the city to the detriment of the urban poor.

We can trace back the linkage to the Slum (Clearance and Improvement) Act of 1956. The Act introduced a distinction between non-notified and notified slum areas where the latter only were entitled to due-process prior to eviction. Besides, benefits under the EIUS scheme were reserved for a long time to notified slum areas only. The notified slum areas in Delhi are compounded of high-density lands within the old city that do not meet safety requirements but are not *per se* illegal settlements. No structures on public land ever got formally notified by the slum wing of the MCD. This means that until 2001, when the three-pronged approach was extended to informal settlements, non-notified slum areas – mainly on public lands – were not entitled to improvement and upgrading works towards the attainment of the minimum levels of basic amenities. This might explain the discrepancy in the level of basic services between notified and non-notified settlements today[396].

In addition, legal and technical barriers related to land have impeded the extension of water and sewerage networks to include slums. Of course, no watertight distinction can be drawn between the legal and technical sets of impediments. A technical obstacle can be driven by political and legal motives, while legal issues can have very practical reasons at their roots.

[396] According to the Planning Commission, about 73% notified and 58% non-notified slums had a motorable approach road. About 10% notified and 23% non-notified slums did not have any drainage facility. Only 1% notified and 7% non-notified slums did not have electricity connection. About 78% of notified slums and 57% of the non-notified slums had a *pucca* road inside the slum (GoI, 2012, p. 27).

Safeda basti is a good illustration of legal impediments to be found: for two decades the DJB refused to install more than eight public stand-posts to cover the water and sanitation needs of 3000 encroachers on the DDA's land. Naturally, service providers are reluctant to get involved in such unstable areas where returns on investment are insecure. Only after the lobbying efforts of two highly respected NGOs did the institution accept to collaborate without relinquishing the DDA and DUSIB's power to evict and relocate the inhabitants. This demonstrates the DJB's inability to operate as a service provider institution only which excludes from its decision making process the interests and stakes of LOAs in a particular area. However, one must recall the peculiar institutional design of the NCT of Delhi which maintains the Central government's grip on land and urban development, and in which state agencies, such as the DJB, struggle to establish their authority and autonomy.

To reflect on technical hindrances for access to basic services, the resettlement colony of Savda Ghevra should be taken as a focal point. The (planned) geographical location of the settlements had significant bearing on its disconnection from the water and sewerage network of the city. Its peripheral situation gave a "legitimate" claim for the DJB to supply water through the *ad hoc* channel of water tankers.

The cumulative outcome of informal settlements facing legal and technical barriers to connection to the water and sewer network is the uneven coverage in the city that we thoroughly analysed in the last Chapter. This inequality is even formally upheld in the different norms for water supply and sanitation (*Cfr. Supra*). The icing on the cake is that only the network-connected households benefit from the free water supply scheme recently launched by the AAP government.

We have seen that irregularly erected dwellings on public land are eviction-prone areas. The illegal and easy-to-bulldoze houses constructed by the urban poor are under increased risk of removal and displacement. The illegal status of the settlements apparently offered an alibi to LAOs willing to engage in city renewal and mega-infrastructure projects. Today a policy framework limits the power of LAOs to a certain extend, but the protection against forced eviction still differs according to the legal categorisation of the land (private/public, notified/non-notified) and the LOA involved. The DUSIB's priority list for rehabilitation is established under impulse of the LOAs, and those agencies can further decide whether or not

to carry out the eviction and resettlement operations themselves, or to delegate them to the DUSIB. Consequently, the relevant LAOs determine to a large extent the timing, due-process and conditions of the eviction and resettlement scheme for irregular settlements on a given piece of land. Besides, the length of occupation does not build up residents' rights to regularisation, but only towards their entitlement to resettlement. It is thus very little protection against arbitrary eviction that irregular settlements' inhabitants enjoy, which in turn hinders the realisation of their right to water and sanitation.

Securing land titles and security of tenure fosters investment and incremental improvement of one's dwelling. This is very telling in the case of Savda Ghevra where residents – within the remit of their financial resources – on the basis of their 10 year leasehold, have been willing to invest in their housing and make the necessary improvements. By the end of this secured period, fear of eviction increases and readiness to invest decreases correspondingly. With regard to the ambiguous strategy of the different institutions involved in the Safeda basti, it is difficult to draw conclusions except the fact that the involvement of the service provider to improve access to basic services within a given area may raise expectations of the community with regard to land security to a level neither intended nor desired by the landowner. Generally, tenure security flowing from different tenurial arrangements thus furthers the realisation of the basic rights for water and sanitation.

Our initial hypothesis turns out to be correct, while we can also add that land-related issues and access to basic services, such as water and sanitation facilities, have been and still are inter-related in very different ways leading towards various outcomes. The various facets of land insecurity translate into different impacts on access to water and sanitation services for the urban poor.

The existence of a link between access to basic services and land insecurity, does not necessarily lead to the conclusion that such a link has no *raison d'être.* Public authorities are very naturally concerned with the allocation of public resources to be invested on the basis of prioritisation of needs. When infrastructure investment is provided in non-permanent places of residence, the risk of public investment being lost is tangible. It is fair for the State to establish criteria for

prioritisation in order to spend public funding efficiently and avoid nugatory expenditures. This approach is also endorsed by international organisations such as UN Habitat[397].

However, the State is required to use the maximum of its available resources, in a non-discriminatory fashion, towards the realisation of the fundamental right to water and sanitation. It is thus necessary to evaluate to what extent the above-depicted linkage is in line with this obligation, and to what extent it runs counter the progressive realisation of the fundamental rights in question. Suffice it to say at this point that refusal to make the necessary infrastructure investment for the sole reason of the illegal status of a settlement is hardly compatible with the principle of equality and non-discrimination that underpins the human-rights based approach. "Place of residence" and "tenure status" have been internationally recognised as criteria on which discrimination is frequent and which require enhanced justifications if they are to be the basis for distinctions. This criterion alone should not direct the coverage of basic amenities within a given city. We contend the idea that the legal status of the land is a good indicator of the "tenable character" of a settlement, to which one must give due regard when ascertaining the level of vulnerability of a particular group. But except for this case, we push towards de-linking both issues and overcome land-related barriers for realisation of the right to water and sanitation.

[397] See the "Water for Asian Cities" launched by UN Habitat, in partnership with Asian development Bank, to improve the water and sanitation conditions in eight South-Asian countries. In India, the programme was solely implemented in the State of Madhya Pradesh because of the existing favourable preconditions. Indeed, the Patta Act enacted in this State grants landless slum dwellers with leasehold rights over their dwelling. This Act "really helped", as "security of tenure was already there in the State, our program mainly focused on providing the basic services: water and sanitation" (Skype call with K. Singh, Chief Technical Advisor UN-Habitat, Delhi, 9 May 2015).

CHAPTER IV: BREAKING BARRIERS TO THE REALISATION OF THE RIGHT TO WATER AND SANITATION

In Chapter I, we saw that the public strategy towards slums has progressively altered since the mid-2000's when it was decided that slums ought to be included within the urban space, through the delivery of basic entitlements such as tenure security, water and sanitation services (*Cfr.* BSUP). This is compounded by the rather slum-friendly composition of the Delhi High Court bench. All this does not lead to the conclusion that the future has never looked so bright for slum dwellers in the Indian capital, but rather that the current conditions are favourable for Delhi to do its share towards the achievement of the MDGs & future SDGs in the country. Taking the stance of the *bona fide* public authorities, which is to spend public expenditure wisely, we will explore various ways to overcome land-related barriers to the realisation of the fundamental right to water and sanitation.

a. Looking beyond illegality

The language of urban governance is loaded with repressive connotations towards slum dwellers. Labelled as "encroachers"[398], "squatters"[399], "unauthorised occupants"[400] or "trespassers on public land"[401], the stance taken towards slum dwellers in judicial pronouncements, policies and legislation is far from being neutral. We can further refer to the High Court of Mumbai's judgment that recently indicated that "occupants of the slums which have illegally come up after 1st January 2000 cannot claim a right to supply drinking water *on par* with a right of a law abiding citizen who is occupying lawfully constructed premises having occupation or completion certificate"[402]. Such a statement is seemingly based on the assumption that when migrating within the city, the urban poor knowingly and willingly chose to take up residence within the informal housing sector and after careful consideration of the different options available, decided to occupy public land, instead of opting for the legal way. Such a thought process completely overlooks the systemic reasons for slum creation and the fact that slum dwellers are victims, rather than culprits, of deficient urban governance and lack of

[398] Slum (Improvement and Clearance) Act of 1956, section 19.

[399] *Olga Tellis vs. Bombay Municipal Corporation* (Supreme Court 1985).

[400] Public Premises (Eviction of Unauthorised Occupants) Act of 1971.

[401] *Sucha Singh vs. Administrative Officer et al.* (Allahabad High Court 1962).

[402] *Pani Haq Samiti & Ors. vs. Brihan Mumbai Municipal Corporation & Ors* (Mumbai High Court 2014). Our own emphasis.

affordable housing stock to cope with tremendous urban population growth which left them with very few livelihood options.

The above reasoning and language hinders the slum-dweller from being treated as a citizen with the same rights and duties as law-abiding and taxpaying citizens within the city, and limits the potential for urban development to be truly inclusive. To make it more so, a "cleaning up" of legislative documents and policies will need to take place in order to discard derogatory language towards a certain fringe of the urban population. In this regard, the highest judiciaries must be aware of the "radiating effect" their pronouncements have on the framing of slum governance and the corresponding narrative. Using terms such as, residents/ inhabitants of "dwellings on public land" allows for looking beyond the illegality of a particular settlement. Correct labelling is the beginning of the process to achieve human rights in the city.

b. <u>Creating and enhancing transparency</u>

Limiting the discrepancy between the expectations of the slum residents and the public authorities is of paramount importance. Feelings of tenure security for residents of irregular settlements emerge from various informal arrangements (issuance of ration cards, voters' cards, or coverage extension of basic services) and are directly related to housing investment and improvements. However, those feelings of security are not necessarily in line with the authorities' position on the legal status of the settlement. In order not to lose investments made and build trust on strong foundations, it is therefore key to manage expectations on the side of the slum dwellers and to keep the various stakeholders on the same wavelength.

In our view, the most evident way to do so on the part of public authorities is to be transparent at each and every step of implementation of rehabilitation schemes. This means that, in the framework of slum upgrading and improvement works, when public providers or LOAs engage with communities – whose occupational status is insecure – the specific aim and scope of the project must be communicated and effectively received by the residents. To secure the convergence of intentions on both sides a "memorandum of understanding" can for instance be signed, under the supervision of NGOs, between the *pradhan* (slum chief) and the public institutions involved. We have seen that in the case of Safeda basti, the involvement of NGOs to play a bridging role was key. Furthermore, the process for the selection of slums under the rehabilitation scheme must be transparent. As this is not the case today, the risk of giving out

contradictory signals with regard to tenure security is high. The first victim of inconsistent and unclear resettlement schemes is the low-income householders' sense of security.

c. Finding the right balance between precariousness and sustainability

This section takes as a starting point the international stringency of the progressive realisation of the fundamental right to water and sanitation. On the basis of discarding retrogressive measures, we assert that in any given informal settlement – whatever the level of land insecurity and access to basic amenities may be – concrete steps ought to be taken towards the improvement of living conditions. Hence, it is important to strike the right balance between precariousness – of the dwelling, from a legal and physical point of view, and sustainability – of the investment made by slum dwellers and public agencies.

In this regard, one has to opt for solutions that do anticipate future incremental improvement of living conditions in slum areas. For instance, a significant number of roads, including the main roads, are paved in Savda Ghevra. However, (partial) destruction of the pavement will be necessary to lay down water and sanitation pipelines. The cost of this (lost) investment is to be included in the cost-benefit analysis and quite naturally tips the scale against the network connection. The Sulabh toilet complexes constructed by the MCD in Savda Ghevra are a good alternative solution for slums not connected to the main sewer system, but on the other hand, they weaken claims for the installation of sewer pipelines for household toilets in the future as sanitation facilities are already accessible. In the same vein, as inhabitants of the resettlement colony have started digging their own tube wells, they might have to rely on irregular water tankers for a longer period than if they were facing a long-term blatant lack of water. It is thus a difficult balance to find between slum upgrading operations in which public agencies or slum dwellers engage, and potential demands for incremental improvements framed later on to address particular needs and issues. As guidance, we can refer to the approach that CURE endorsed for their sanitation project in Savda Ghevra[403]. The NGO gives assistance in the design and construction of in-house toilets on the basis of the existing structure (*pucca* or *kutcha*), where further improvements to the dwelling are envisioned and permitted, without coming back on previous investments. For example, with *kutcha* houses a simple frame is added to the

[403] See the "Potty Project" designed by architect J. King under the leadership of R. Khosla, director of CURE (see further: http://www.julia-king.com/research/the-potty-project/).

structure and the toilet built within, which enables home upgrades in the future and lays the foundation for a claim for connection to the sewer system of the DJB.

d. <u>Altering the norms for water supply and sanitation</u>

Both at the international and national level norms for water supply and sanitation exist. It is not the goal here to review the adequacy of these standards, but rather to reflect on the calculation method. In the Indian legal framework, norms for water supply are directly dependent on the type of water supply and indirectly on the sanitation system. It is so that the Manual on Water Supply and Treatment issued in 1999 recommends the maximum of 40 lpcd for communities that rely on public stand-posts and have no sewerage system (a cause/consequence of the single/twin pit latrines or the practice of open defecation). On the other hand, when there is an existing sewerage system (for water-flush toilets) and piped water supply, the maximum is 135 lpcd, i.e. over three times the previous amount.

Those standards, taken over in the Tenth Five Year Plan, have for primary effect to uphold a situation of *status quo* where environmental improvement in slum areas is neither expected nor conceived. Bound to permanently depend on sub-standard water and sanitation systems, room for upgrading the slums is not included within the maximum standards laid down in the Manual. Coincidentally (or not), the beneficiaries of the "free water supply policy" are the ones connected to the water supply network in the city. This evaluation is precisely what G. Verma had in mind when writing that "somewhere down the line, slum saviours bestowed upon slums 'the right to minimum services in the mean time'. The (valid by any standards) argument for this was that every citizen has a right to basic services. The logic of services being 'minimum' related to them being 'in the mean time'. But 'mean time' has become forever and 'minimum' has become the norm"[404].

The above criticism cannot be uttered about the international standards issued by the WHO. Its approach is radically different as it classifies the needs met according to the service level, without regard to the source of the water and the type of sanitation facilities at the household or community level.

[404] G. D. Verma, 2002, pp. 95-96.

e. Protecting the "bundle of rights" at risk during evictions

Forced evictions potentially threaten every aspect of daily life for the urban poor in a city. Recalling the words of the Delhi High Court, "what very often is overlooked is that when a family living in a *jhuggi* is forcibly evicted, each member loses a 'bundle of rights' – the right to livelihood, to shelter, to health, to education, to access to civic amenities and public transport and above all, the right to live with dignity". We can also add as a knock-on effect that a surge in eviction cases is highly likely to reduce the sense of tenure security of the low-income population in the city. Because of such tremendous impacts, the number and scope of evictions should be kept to a minimum; the ones that are carried out should be done so within the limits of a strict, precise and transparent framework. Moving down that road will not only preserve the Delhi government from contempt of the High Court for non-compliance with its jurisprudence, but also establish its role as a leader when it comes to putting Indian practices in line with international standards.

The CESCR, during its 40th session, recommended that the Union of India adopted a legislative framework prohibiting displacement and forced evictions[405]. This is particularly relevant with regard to the "relocation package" and eligibility criteria for resettlement which have been changed every now and then by the administrations of the MCD and DUSIB. Formalising in a legislative document a clear and coherent resettlement policy with a long-term vision for slum governance is of fundamental importance to counter legal insecurity and help the democratic deficit. In the case of Delhi, triggering the adoption of such an act, which could further be used as a draft for other States, is the responsibility of the Central government.

Effective protection against arbitrary evictions translates into recognition of occupancy rights to slum dwellers. Occupancy rights were promoted in the National Housing Policy of 1994 already and taken over in the Draft National Slum Policy in 2001. The Policy contains no further indications on the exact scope of "occupancy rights" but we can refer to the Patta Act enacted in Madhya Pradesh for illustration[406]. The Act confers leasehold rights to landless persons in respect of sites for dwelling house in urban areas. In other words, *pattas* are a "sort of certificate

[405] CESCR, 2008, para. 71.

[406] Madhya Pradesh Nagariya Kshetro ke bhoomihin Vyakti (Pattadhruti Adhikaron Ka Pradan kiya Jana) Adhiniyam of 1984.

saying that nobody will evict you and you can live here until eternity"[407]. This was rather easy to implement as the vast majority of slum dwellers were residing on public-owned lands. As this is the case in Delhi, the GNCTD could take stock of the situation in Madhya Pradesh and replicate parts of the scheme that are applicable to the particular situation in the capital. To capture the broader picture, one must recall that conferring occupancy rights to slum dwellers in Delhi would amount to grant a mere right to stay on about 10 sq. km., covering less than 3% of the total residential area in the city. From a city-wide perspective, urging for regularisation is not that much to ask after all.

Lastly, we want to reflect on the use of a cut-off date in resettlement policies. As things stand in Delhi, constructions erected before the cut-off date (04.06.2009) give its inhabitants the right to relocation in flats earmarked for EWS. The proof of residence is to be demonstrated on the basis of a range of administrative documents, such as voters' cards or ration cards. In line with its purpose, the cut-off date excludes a group of people from benefits under the scheme. Aside from the risk of disparity between the date the documents were issued and the actual start of one's tenure, taking the length of occupation as a basis for rehabilitation entitlement in slum areas hardly furthers the goal of a "slum-free city". We have noticed that, as a general trend, the longer the occupation the larger the scope of incremental improvements in one's dwelling. From these trends, it is doubtful that the oldest settlements are the ones to be prioritised for upgrading. The fact is, however, that the percentage of flats constructed for EWS compared to the total number of slum dwellers in Delhi is really low (50.000 flats earmarked for EWS is supposedly to cover 367.893 households living in slums, this is roughly 7%). In such circumstances, exclusion from the scheme is a necessity but one must ensure that the most vulnerable groups are included. As a matter of fact, other tools could ensure selection without involving the arbitrary character of the cut-off date. We could envisage for instance the establishment of a percentage derived from the number of public stand-posts, the number of litres of water delivered by tank or the number of toilet complexes and pit numbers in relation to the total population number in a settlement. Such a basic idea surely needs to be further fleshed out, but it at least guarantees that the actual needs are taken into account for selection under the rehabilitation scheme.

[407] Skype call with K. Singh, Chief Technical Advisor UN-Habitat, Delhi, 9 May 2015.

General conclusion

Following global trends, India has witnessed a rapid surge in its urban population from the 1950s onwards. Megalopolises of over 15 million inhabitants characterised by unprecedented land concentration have appeared in the Indian urban landscape. As "engines of economic growth", these cities have contributed in a significant manner to the growth of the world's largest democracy's GDP. But despite the development of "strong and vibrant" economies, the cities have failed to distribute economic growth dividends among their urban population. Stark illustration thereof is the unequal coverage of basic services for water and sanitation that hinder the full realisation of the urban poor's rights in the Indian capital. From the point of view of basic urban services, the city is thus far from being inclusive. Such a situation is the result of a cumulative but rather systematic process of marginalization where land insecurity plays a key role.

In light of the previous developments, it is correct to posit that land-related issues limit the accessibility to water and sanitation services in Delhi, especially for inhabitants of irregular settlements. The relationship between insecure tenure status and deficient water and sanitation facilities goes much further than them being two constitutive elements of the definition of a slum. For legal or technical reasons, informal settlements are not connected to the underground water and sewerage network of the city. Such impediments to access, although justified to a certain extent to ensure return on investment, do not fall under India's international obligation to realise the relevant rights to the maximum of its available resources, in an equal and non-discriminatory fashion. The reverse would be true if land and tenurial status were used as the basis for determining the "tenable" character of a settlement and its corresponding need for rehabilitation as a priority.

Approaching the challenges of urbanisation through the human rights lens has proven a fruitful exercise for our research. First, the analysis of the conceptual and normative framework on the human rights to water, sanitation and adequate housing at the international and national level has revealed fundamental differences and common obstacles. Both from the global and Indian point of view, land issues have been depicted as potential hurdles to the achievement of the basic rights to water and sanitation. The accessibility of water and sanitation facilities is jeopardized when there are land-related impediments in a given area for a group of right-

holders. Barriers to the universalization of basic urban services also endanger the principles of equality and non-discrimination. Lastly, the stringency of progressive realisation using the maximum available public resources provides the tools to address the unequal distribution of the latter.

Nonetheless, the human-rights based approach to urbanization has yet to reveal its full potential. The emerging norm of the right to the city is in our view very promising in this regard. Under this umbrella concept, every city dweller has the right to exercise his or her urban citizenship in each and every aspect of urban life, ranging from the exercise of participation rights to the rights to livelihood and basic services. Linking together a whole series of entitlements and corresponding struggles that characterise urbanization, the RTTC has a lot to offer from an analytical and pragmatic point of view. On the one hand, analytical added-value derives from the collective approach advocated by the RTTC towards the various stakes in the city for its inhabitants. On the other hand, the transformative agenda of the RTTC represents a powerful tool to articulate human rights claims in a single PIL in front of the highest judiciaries. We believe that a community-driven petition bringing to the fore the linkage between land insecurity and access to basic services could get additional traction from a concept such as urban citizenship. Besides the realm of judicial action, public policies are also to benefit from the RTTC approach which seeks to "unleash the potential of cities to be sites of integration and equitable sharing of the benefits of growth"[408]. More fundamentally, the RTTC entrusts the "city framers" – be they elected representatives, judges, the RWA, NGOs or the city dwellers themselves – to constantly invent and re-define what constitutes the public interest and what ought to be done with public-owned land. This will allow the creation of the necessary urban space for the realisation of the slum dwellers' fundamental rights.

[408] M.-H. Zerah *et al.*, 2011, p. 10.

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