
LAW ON PAPER, ASH ON THE GROUND: RETHINKING DESIGN IN INDIA'S SLUM REHABILITATION REGIME

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ABSTRACT

Do inadequate policies harm the people they are made for or is it the lackadaisical implementation of those policies that are the problem? When does the law become inadequate and how does one gauge that gap so that the law actually delivers? The Supreme Court made “housing” a fundamental right under Article 21’s broad “right to life” ambit and recognised that evictions without guaranteed rehabilitation is in violation the same.¹ *Olga Tellis* talked about the necessity of the implementation of “SUP” or Slum Upgradation Programme but that has largely been ignored in institutional executive frameworks.

In this paper, I argue that several such gaps on part of the government and policy making bodies have resulted in significant breaches of human dignity. This paper also argues that existing policies regarding rehabilitation are inadequate and collapse as soon as minor loop holes are presented as obstacles. Further, a proposition of a uniform yet alterable-according-to-state-specific-demands policy at a central level is presented.

Emphasis is given on the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 to explain and argue against policies that fall short of necessary implementation, especially in cases of fire. This paper draws on the structural framework created by landmark cases like *Ajay Maken v. Union of India*, *NAGAR v. State of Maharashtra*, and *Sudama Singh v. Government of Delhi*; various state policies for slum rehabilitation in force in India; and the Disaster Management Act, 2005 to examine, analyse, and put forth the paper’s findings, solutions, and conclusions.²³⁴

The paper’s novelty rests on two grounds: First, proposing the evidentiary burden from individual residents to the State itself, and second, recommending an interim rehabilitation policy in cases of displacement factors, like fires and forced evictions, in-line with reasonable environmental concerns and statutory obligations. The paper concludes that without covering the gaps in housing law, the constitutional guarantee of land and housing rights to the slum-residing poor remains unfulfilled.

¹*Olga Tellis v. Bombay Municipal Corpn.* AIR 1986 SC 180

²*Ajay Maken v. Union of India*

³*NGO Alliance for Governance & Renewal v. State of Maharashtra* (2025) SCC OnLine Bom 2425

⁴*Sudama Singh v. Government of Delhi* (2010) SCC OnLine Del 612

INTRODUCTION

One can identify two causes for why rehabilitation policies fail to deliver to people. Firstly, as is quite evident *prima facie*, executive failure.⁵ Lethargic bureaucracy, failure of implementation, underfunded administration and corruption are the primary factors behind this particular cause.⁶ However, the focus of this paper limits itself to legislative and policy failure. The origin of the law is itself called into question. The structural design of rehabilitation policies is itself inadequate and, this in turn, acquiesces the non-delivery of any possible exhaustive remedy.⁷ Surona Visagie and Leslie Swartz, in their findings, argue that policy documents are largely indifferent to the “practicalities of implementation” and subsequently, implementation falls short.⁸ The same pattern would apply elsewhere, including India. Usually, commentaries on Indian housing law fixate on the former cause but this paper argues that the layout of housing law is the root cause and needs to be remedied and that the former is only a ripple effect of the latter.

The paper starts with tracing the constitutional foundations of the right to shelter and analysing the broader experiences of evicted persons in India along with the comparison to the International framework.

The paper inculcates a working test for telling these two failures apart and then implementing the result of the test to an instrument which has collected a lot of judicial input and scrutiny, i.e., the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015. The focus of this paper also restricts itself to displacement factors like fire and not evictions for the purpose of redevelopment as factors like fire exposes the policy’s designs bare and leaves no scope for excuses stemming from bureaucratic implementation failure.

The Constitutional Foundation

“The coherence of constitution law emanates from the character of the institution it emanates from and in India, that institution is the Indian Judiciary.” It becomes necessary, then, to trace

⁵Kelli Rankey, “A Framework for Creating Positive Change: Solutions for Slum Improvement through Local Government” 32 *Michigan Sociological Review* 155 (2018).

⁶Jaidul Islam, Md. Julfikar Ali & Sk Mithun, “Slums in India: Making Sense of Space in Urban Planning” *GeoJournal* 87(3) 1922 (2022).

⁷Niroopa Subramanyam, *Care for the Uncared (For)* 120 (Routledge, 1st edition, 2021).

⁸Visagie, S., & Swartz, L., “Rural South Africans' rehabilitation experiences: Case studies from the Northern Cape Province” *The South African journal of physiotherapy* 72(1) 298, available at <https://doi.org/10.4102/sajp.v72i1.298>.

the developments of the Supreme Court's judgements regarding the right to shelter. The right to live is a fundamental right under the constitution and the Supreme Court in *Olga Tellis* ruled that there can be no estoppel against the Constitution.⁹ In *Chameli Singh*, the court stated that the right to shelter does not merely include a mere roof over one's head but an infrastructure necessary for a dignified existence. The Court in *Olga Tellis* proposed a Slum Upgradation Programme and a Low Income Scheme Shelter Programme to be pursued earnestly, with the help of the World Bank, to secure the right of a dignified shelter to slum dwellers.¹⁰ Forty years later, the SUP still remains an elusive idea in most of the Indian cities.¹¹ This ignorance of the Slum Upgradation Programme is the evidence of the early apathy and neglect showcased by the Indian State.¹²

The Working Test: Distinguishing between inadequate law and inadequate implementation

The paper argues that housing law in India shall be treated substantively and not just through an administrative lens. The working test includes three conditions and the law would be deemed to be "inadequate" if at least two of the three conditions are met. *First*, the policy would fail if its own eligibility criteria presents a loophole that would defeat the claimant's entitlement. *Second*, if the policy places an unreasonable amount of burden on the claimants and exonerates the state of any such burden itself. *Finally*, the policy does not compel the state to fill the gap or the loophole it suffers with, that is, that if there is no statutory obligation to cure a flaw once it becomes known.

Applying only the first or the second out of the three conditions would risk over-attributing the blame on the policy design where administrative neglect is a major cause. This paper argues that it is actually the conjunction of the three conditions that is evident of statutory neglect rather than just bureaucratic one.

Applying the test to the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015.

The Delhi Urban Shelter Improvement board was created by the DUSIB Act, 2010 as the nodal

⁹*Supra*, note 1.

¹⁰Usha Ramanathan, "Illegality and the Urban Poor", *Economic and Political Weekly* 41(29) 3193 (2006), available at <https://www.jstor.org/stable/4418470>.

¹¹*Supra*, note 1.

¹²Raaz, Forty years after Olga Tellis, Mumbai's Jai Bhim Nagar protests against Builder Raj reveal the unfulfilled promise of the right to housing in India, *The Leaflet*, 24 March 2025.

agency for regulating slum development in Delhi.¹³ The DUSIB Act, 2010 and the National Capital Territory of Delhi (Special Provisions) Act, 2011 protected all bastis built before 2006 from demolition without the provision of providing alternative accommodation. The rationale for setting 2006 as the cut-off year is unclear.¹⁴ Moreover, it has become extremely difficult in some cases to prove that the bastis were existent before 2006.¹⁵ The 2016 Delhi Cabinet revised the eligibility for the alternative accommodation provision to 2015 but the year to prove existence of the basti before 2006 was retained.¹⁶ The policy also barred any new construction of a basti after 14 February 2015 and mandated in-situ rehabilitation within an area of five kilometers wherever technically feasible. The policy's eligibility criteria also includes that the name of the resident must appear in the electoral rolls from 2012 to 2015 (prior to January 1, 2015) and in the joint survey.

The first condition of the working test is satisfied. In the following instance, exclusion was due to procedural technicality rather than what the policy actually purported to test, that is, whether the resident was a resident of the basti in question before the cut-off year. In the *Bhoomiheen* litigation of June 2025, residents were excluded because dwellings belonging to individuals who were minors before and on the cut-off date were not deemed to be eligible.¹⁷

The DUSIB policy also places the entire burden of proof on the slum residents.¹⁸ This is when the DUSIB's own 2014-15 survey is treated as only a verification check rather than as an independent source of proof.¹⁹ *Sudama Singh* states the no eligibility shall be recorded without the State's survey being conducted, implying that the burden of proof is on the State and not the residents.²⁰ The 2015 policy inverts this by putting the burden on the residents.²¹

The Policy ticks the third condition in situations where a resident's documents are destroyed, or lost. The DUSIB has not been assigned any role to course correct the problems presented by a lack of documentation, especially in a slum where conditions like fire, or say, flooding, can

¹³The Delhi Urban Shelter Improvement Board Act, 2010.

¹⁴Gautam Bhan, "This is no longer the city I Once Knew". Evictions, the Urban Poor, and the right to the City in Millennial Delhi" 22(1) *Environment and Urbanisation* 127-142 (2009).

¹⁵*Ajay Makan v. Union of India*, 2019 SCC OnLine Del 7608.

¹⁶Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015.

¹⁷Atul Ranjan, "DDA demolishes 344 Bhoomiheen Camp houses, hundreds of families displaced", *The Hindu*, June 12, 2025.

¹⁸Delhi Urban Shelter Improvement Board Act, 2010 (Delhi Act 7 of 2010).

¹⁹DUSIB, Annual Report, 2014-2015.

²⁰*Sudama Singh & Anr. v. Government of Delhi & Anr*, 2010 SCC OnLine Del 612.

²¹*Supra*, note 16.

erase someone's whole identity by destruction of documents. There is no body in place to help with document verification or survey audits. The DUSIB is not equipped with such a responsibility either.

The DUSIB policy stands inadequate by filling all the three conditions of the working test, irrespective of the incompetency of the bureaucracy.

As it has been aforementioned numerous times, the question of inadequate law vs inadequate implementation is an unclear one and the paper's main proposition flows from claiming that it is the law which is the cause and the implementation only a mere effect, or at least a contributing factor. Taking the example of a fire incident will help us understand this better.

A fire incident removes the confounding variable of neglected implementation or official delays as in cases of an eviction drive, the loss of documents or any other "problem" can be attributed to the bureaucratic apparatus.²² In case of a fire, however, compounding factors on part of the administration can be eliminated. The 2025 fire incident near Rithala metro station in Delhi sheds light on the same.²³ Destruction of identity papers and no accommodation provided to the victims plagued the lives of many. Looking at India's disaster management structure, the Disaster Management Act, 2005 also does not provide any link to the loss of dwelling.²⁴ An inflicted resident would have to navigate through the broken chains of the rehabilitation policy as well as would not get relief under the DMA, 2005 in cases where no injury or death has taken place, leaving the loss of dwelling an ignored aspect in law.²⁵

A Necessary Counterbalance

This paper also argues that any claim for rehabilitation must also coincide with another very important constitutional entitlement- the access to a free use of sustainable public spaces. The case of *NAGAR v. State of Maharashtra* becomes relevant here.²⁶ The NGO Alliance for Governance and Renewal challenged the Maharashtra government's Development Control and Promotion Regulation on the grounds that only a small amount of public spaces will be

²²Rush D, Bankoff G, Cooper-Knock S, Gibson L, Hirst L, Jordan S, Spinardi G, Twigg J, Walls RS, "Fire Risk Reduction on the Margins of an Urbanizing World" 29 (5) *Disaster Prevention and Management: An International Journal* 747–760 (2020).

²³Vishnu Khanawalia & Sana Iqbal, "Burn, Wait, Evict, *The Frontline by The Hindu*, 27 December 2025, available at <https://frontline.thehindu.com/incoming/delhi-ncr-slum-fires/article70429537.ece>

²⁴The Disaster Management Act, 2005.

²⁵*Supra*, note 22.

²⁶025:BHC-OS:8961-DB.

accessible under the same.²⁷ The policy permitted spaces larger than 500 square meters to be used for slum rehabilitation leaving only about 35 percent of total such spaces for public use.²⁸ The petitioners challenged the same on the grounds of the *public trust doctrine* arguing that it is the State's duty as a trustee of public land to not divert them for commercial/personal or redevelopment uses.²⁹ The Court rightly affirmed that the right to a dignified shelter is a fundamental right but it has to be balanced with legitimate concerns over environment and public trust.³⁰

This case is necessary as part of this paper since it disciplines the curse of reform that the state must take. A central or state level policy shall not blindly allocate lands for slum redevelopment. Qualified and reasonable planning needs to be made in order to balance valid concerns and constitutional rights.

The Absence of a National-level Uniform Policy

There is no uniform policy with regards to housing and redevelopment laws in India. While the same falls under the state list, the centre can make and implement laws on topics under state list under Article 253 of the Indian constitution.³¹ Under Article 253, the central government can make laws on the subjects under the State List when it is necessary to implement international agreements, treaties, or conventions.³² India is a party to the *International Covenant on Economic, Social, and Cultural Rights* and ratified the treaty on April 10, 1979.³³ India is also a signatory to the *Convention on All Forms of Racial Discrimination against Women (CEDAW)*, *The Convention on Rights of the Child (CRC)*, and *The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*.³⁴ It is thus part of India's legal obligations to uphold the right to adequate housing.³⁵

Moreover, laws in various states are inadequate or based on contradictory models.³⁶ Delhi's

²⁷*Ibid.*

²⁸*Ibid.*

²⁹Razzaque, Jona. "Application of Public Trust Doctrine in Indian Environmental Cases"13 (2) Journal of Environmental Law 221–34 (2001).

³⁰*Supra*, note 22.

³¹The Constitution of India, Art. 253.

³²Milind Rajratnam and Shivang Yadav, "Slums in India: Tracing the Contours of Human Rights Obligations", *Jurist News*, 24 April 2020.

³³Ravi Nair, "UNHRC's examination of India's periodic report after 28 years: Part 1" *The Leaflet*, 24 June 2024.

³⁴National Human Rights Commission, India, "Know Your Rights Series" (NHRC, 2009).

³⁵Naomi Hazarika, "Slum Redevelopment as a 'Real-Estate Frontier': Insights from Delhi, India", *Regional Studies* 2021.

³⁶*Ibid.*

DUISB policy is based on a public survey model while Maharashtra's policies are based on a public-private partnership model.³⁷ Hence, a central level which at least guarantees a minimum standard of adequate housing will be beneficial, especially for the urban poor.³⁸

Any such policy shall have a rebuttable presumption of lawful occupancy in favour of a resident of a particular slum cluster. This would effectively shift the burden of proof from the individual to the State who would have to rebut the presumption through surveys, municipal rolls and administrative records. A central level statutory floor shall be laid out which would enumerate a minimum standard protocol which would comprise the following:- *first*, an automatic trigger rule which would trigger the aforementioned presumption in case of a fire incident or a demolition, *second*, a survey obligation on part of the state, *third*, the provision of a time bound alternative accommodation to be rehabilitate the residents in an interim manner, and *fourth*, the establishment of a cell to expedite reconstruction or retrieval of necessary documents. Each state shall be free to adopt a model which would be either public or private, or modelled on a state's own approach to land and financing models. But no such adaptation shall be made to fall below the minimum standard protocol as laid put in the central policy.

Conclusion

The paper deals with the question of whether the slum-residing poor's insecurity with regards to housing traces its origin to bad law or bad implementation and concludes that it is the design of policy and law which is the primary cause of inadequate implementation of rehabilitation policies in slums in India. The example of Delhi's Slum & JJ Rehabilitation and Relocation Policy, 2015 is taken to show that its loopholes give way to bad delivery. The consequence of not remedying law is the non-delivery of diligence and constitutional guarantees. Better training for surveyors, more funding, or stricter executive or judicial scrutiny might tighten implementation but they are of no use if the blueprint of implementation is itself inadequate. Moving the evidentiary burden on the State is one major change that slum rehabilitation policies, like that of Delhi's, require.

A directive that has no sound statutory mechanism and treats the citizens it is made for as secondary remains to be a directive only on paper. This is unfortunately a pattern that this paper

³⁷Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971.

³⁸Arnav Mathur & Maitreyee Mane, "Out Of Sight, Out Of Mind: Critiquing India's Housing Poverty Policies", *Law School Policy Review* 2 April 2024.

has tried to trace through. Constitutionally sound and reasonable reforms are the need of the hour.

A common floor uniform enough to guarantee interim shelter obligations, a shift of the evidentiary presumption, and a revamped document restructuring and verification pathway can do well to restructure underlying pathways that block a slum resident's housing security even further.

The gap between constitutional guarantees and scant laws shall be closed and the paper offers a solution to that.