
THE CONCEPT OF POSSESSION IN THE CONTEXT OF ILLEGAL ENCROACHMENTS IN URBAN INDIAN CITIES

Zoya Zahed, BA.LLB, Gujarat National Law University, Gujarat

ABSTRACT

Illegal encroachments in India, in recent times, have become a pressing issue in the country's political landscape. The concept of possession in India is not straightforward as it was not just a product of colonialism but can be traced all the way back to the caste system. It is in this context that this research paper seeks to examine the concept of possession, considering the various ways in which an individual's identities can intersect to create oppression, specifically in the form of dispossessing marginalized communities of their land in urban areas, where such dispossession is an arbitrary exercise of state power appearing to target members belonging to certain communities as recently seen in the Jahangirpuri demolition. This research paper aims to provide solutions to the problem of illegal encroachments on public land by the urban poor through an intersectional approach in order to foster lasting reform at a systemic level.

Keywords: possession, encroachment, urban poor, public land

Introduction

Possession as a legal right is one that has been debated for years upon years with different jurists interpreting the concept in different way. Sir John Salmond, an eminent legal jurist himself has described it to be the most difficult conception in the entire field of legal theory. The concept of possession is nothing if not convoluted and is a reflection of the evolution of society from one that was based on community, interdependence, and collective ownership to the more western liberal ideas of the laissez faire system which resulted in rugged individualism and the creation of conceptions such as the legal right to ownership and possession over property.

This shift can be clearly witnessed with the onset of colonialism where the morals and legal ideals of white settler colonialist powers transplanted the legal, social, and economic systems of the countries they enslaved. However, the capitalist conceptions of ownership and possession cannot simply be traced back to the oncoming of colonialism, as in India the concept of control was and still is very closely associated with the caste system which has been the prevailing social system for thousands of years dictating the moralistic values and thereby, the legal standards of Indian society for thousands of years.

In India, the divide in the classes cannot simply be reduced to the bourgeoisie and the proletariat, rather the class divide is based on the caste divide. The caste into which one is born in determines their occupation which is a practice that has been observed ever since the beginning of the caste system more than 2,000 years ago. Even after the end of the British Raj in India and the principle of equality having been enshrined under Article 14 of the Indian Constitution, society still remains constricted by the caste system with a very limited opportunity for social mobility.

The ownership and control over wealth and land, even before colonialism, has been confined in the hands of the upper castes which parallelly make up the upper class in India. Owing to the large amount of social capital they enjoy, the upper castes belonging to the dominant brahmin and kshatriya castes, have been able to convert this into material wealth and possessions.

Hence, when examining a concept such as possession in India, one cannot ignore the role the caste system has played and continues to play in the way the law has been implemented. Modern day India though, is not just afflicted by the caste system but also religion which has

become yet another factor that must be accounted for when attempting to understand the systemic discrimination faced by the marginalized communities of India, specifically when it comes to the possession of land, land that has historically been controlled by the upper castes.

The oppression of such marginalized people is only compounded with the intersection of their caste, class and religious identities. The narrative of clearing of “illegal encroachments” on public land has become an effective tool in furthering the oppression of marginalized communities who reside in these settlements having been segregated from upper caste Indian society which also includes upper caste Indian Muslims. These are slum colonies which come up in urban areas owing to housing being unaffordable for people engaged in menial occupations, that are forced by their circumstance and a will to survive into encroaching upon public land to build housing, shelter, and community for themselves.

When it comes to the jurisprudence surrounding illegal encroachments, the Supreme Court and the High Courts of India have been considerably progressive and proactive in safeguarding the rights of the poor and marginalized that find themselves the inhabitants of such encroachments. However, when it comes to the enforcement of these rights, such as the right to shelter, the right to housing and the right to livelihood, calling such enforcement lackluster would be an understatement. Hence, through this research paper, we will be attempting to understand the concept of possession in Indian Jurisprudence through an intersectional lens.

It is important to view the legal right of possession from an intersectional lens in order to understand the different matrices of oppression which intersect to produce discrimination at a systemic level when it comes to “illegal constructions/encroachments” over public land. In the wake of the worrying trend of demolishing settlements where members belonging to publicly dissenting communities reside, possession, or rather dispossession is becoming an instrument of arbitrary state power and as a threat against resistance of the imposition of majoritarian rule.

Therefore, in the current political climate, it becomes extremely pertinent to understand the concept of possession in the Indian legal system as possession is intertwined with one's livelihood which intersects with the amount of social capital one wields. In this paper, we not only seek to analyze significant judgements of the Supreme Court and High Courts of India related to illegal encroachments, but we will also attempt to suggest effective measures of reform to combat the disproportionate discrimination of marginalized communities at a systemic level when it comes to possession of land.

Meaning of Possession

Salmond defines possession of a material object “as the continuing exercise of a claim to the exclusive use of it.”¹ He described possession as the evidence of ownership, i.e., one who is in possession of a certain thing is presumed to be its owner. Possession, according to him, consists of two elements, a subjective mental element of intent known as *animus* and an objective physical element of possession known as *corpus*. The mental element or *animus possidendi* refers to the intent which is necessary for possession as it is an exclusive claim to a thing, it is the intent to use a thing possessed exclusively. The physical element, on the other hand, is when the claim of the possessor is exercised actually and continuously, hence, *corpus possessionis* is simply the continuing exclusion of interference/use by outsiders on the thing that is in possession, combined with the agency to use the thing as one wills.²

The two elements of possession are consistent with Savigny’s understanding of possession being a “conjunction of two facts: physical power over a thing, and an intention to own it in the lay sense of being able to use it, with no limitation of time, exclusively for your own benefit (*animus domini*). If you had that power, and that intention, you had possession.”³

Holmes, too, agrees with Savigny that physical control over the possessed thing is an essential element of possession (and more power is required to gain than to keep possession), as well as a specific intent. Only, for Holmes, the requisite intent is just the desire to keep others out of one's use, unless the owner has transferred possession.⁴ Holmes, with his definition, attempts to sever the concept of possession from the concept of ownership.

The concepts of possession and ownership, thereby, consistently overlap as possession is viewed as the physical manifestation of ownership. To quote the words of Rudolf Von Ihering, “Possession is the objective realization of ownership. It is in fact what ownership is in right. Possession is the *de facto* exercise of a claim; ownership is the *de jure* recognition of one.

A thing is owned by me when my claim to it is maintained by the will of the State as expressed in the law; it is possessed by me, when my claim to it is maintained by my own self-assertive will.” He goes on to state that possession which lacks ownership lacks the safeguard of a legal

¹ Alice ES Tay, "The concept of possession in the common law: foundations for a new approach" (1963) *Melb. UL Rev.* 4 476.

² Richard A. Posner, 'Savigny, Holmes, and the Law and Economics of Possession' (2000) 86 *Va L Rev* 535

³ *Id.*

⁴ *Id.*

right of ownership which accompanies it, it is merely a body of fact. However, ownership without possession is simply a legal right that is unsupported by the facts. "Ownership strives to realize itself in possession, and possession endeavours to justify itself as ownership."⁵

Possession in Indian Law

Possession is a common law concept and is protected under the law of torts in India. Though the right of possession is also statutorily protected and is a right that has been recognised and developed by the Courts of India, specifically the Apex Court. Section 5 of The Specific Relief Act addresses the action required to be taken for the recovery of possession of a particular immovable property based on its title. This section empowers one who possesses a higher title to claim possession.⁶ Section 6 of The Specific Relief Act provides a remedy to a person who is dispossessed of their property without their consent. Such a provision allows one to file a claim for recovery of possession notwithstanding any other title that may be established in the suit. As a result, no one is allowed to take ownership or dispossess another by force; instead, they must seek control through the manner that is prescribed by law, i.e., procedure established by law.⁷

The Supreme Court of India in the case of **Karnataka Board of Wakf v. Government of India** observed that, "in the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion."⁸ In **Superintendent and Remembrancer of Legal Affairs v. Anil Kumar Bhunja**, the Apex Court held that, "possession is a polymorphous term which may have different meanings in different contexts. It is impossible to work out a completely logical definition of possession uniformly applicable to all situations in context of all statutes."⁹ While clarifying the law on possession and ownership of immovable property, the court in **Poona Ram v. Moti Ram** defined the concept of a "possessory title" as being when a person has settled or established possession of a certain property, it is referred to as a title over that property.¹⁰ Therefore, India has distinguished between possessory title and proprietary title by recognising the right of "**Adverse Possession**" in Indian law.

⁵ Alice ES Tay, "The concept of possession in the common law: foundations for a new approach" (1963) *Melb. UL Rev.* 4 476.

⁶ Specific Relief Act 1963, s 5

⁷ Specific Relief Act 1963, s 6

⁸ *Karnataka Board of Wakf v. Government of India* (2004) 10 SCC 779

⁹ AIR 1980 SC 52

¹⁰ *Poona Ram v. Moti Ram* AIR 2019 SC 813

The Indian Limitation Act prescribes the law on adverse possession. A suit for possession of immovable property or any interest therein based on the title is limited to 12 years under Article 65, Schedule I of The Limitation Act. It's worth noting that the 12-year limitation period begins "when the defendants' possession becomes adverse to the plaintiff." This means that if a cause of action exists for filing a suit for possession, and the suit is not brought within the specified period of limitation, not only does the period of limitation expire, but the right to title or possession, as the case may be, is also extinguished.¹¹

In the case of Government (Central/State) property, the statute of limitations for any litigation (save a suit before the Supreme Court) is 30 years, with the same initiation point as a private person's suit which is from the day the possession has been overtaken by another, or the day the possession becomes adverse.¹² The Privy Council in **Perry v. Clissold** laid down that "if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is for ever extinguished and the possessory owner acquires an absolute title."¹³

The rationale behind the doctrine of adverse possession is based on the notions that title to land should not be in doubt for lengthy periods of time, that society will gain from someone using land that the owner has left idle, and that those who learn to view the occupant as owner may be protected. In other words, after a long period of time, the original title holder who failed to enforce his rights over the land owing to inaction cannot be allowed to re-enter the land.¹⁴ A long-term position establishes certain expectations, and it is unjust to disappoint individuals who have placed their trust in you. In Holmes' words, "man like a tree in the cleft of a rock, gradually shapes his roots to the surroundings, and when the roots have grown to a certain size, can't be displaced without cutting at his life."¹⁵

The Concept of Dispossession

Dispossession can exist in many forms and has existed in many forms such as the state of being dispossessed of an individual's home, their land, their territory, their means of livelihood, and in more abstract terms, it can also be applied on being alienated from one's culture, language,

¹¹ The Limitation Act 1963, Schedule 12, Art. 65

¹² <https://lawcommissionofindia.nic.in/reports/Adverse%20Possession.pdf>

¹³ *Perry v. Clissold* (1907) AC 73, at 79

¹⁴ *Amrendra Pratap Singh vs. Tej Bahadur Prajapati*, (2004) 10 SCC 65

¹⁵ Holmes, Oliver Wendell; Lerner, Max (Editor). *Mind and Faith of Justice Holmes: His Speeches, Essays, Letters and Judicial Opinions*. Boston, Little, Brown and Co.

history and sense of self. Such a culture of dispossession has come to define the experiences of much of the world's population in today's day and age. After all, possession is a juridical conception which has influenced modern political philosophy and economics in numerous ways. The self-possessive individual, plays a crucial role at the intersection of law, politics, and economics. The logic upon which it is founded on is visible in colonial settlement techniques, as well as in the rationales that are utilized for fortifying national borders and defining citizenship built on racial and gender norms that impact belonging and exclusion of an individual in society.¹⁶

Simply defined, it is the act of depriving one of their land, their property, and/or other material possessions. However, when viewed from an intersectional lens, dispossession can be more accurately defined as “processes and ideologies by which persons are disowned and abjected by normative and normalising powers that define cultural intelligibility and that regulate the distribution of vulnerability: loss of land and community; ownership of one's living body by another person, as in histories of slavery; subjection to military, imperial, and economic violence; poverty, securitarian regimes, biopolitical subjectivation, liberal possessive individualism, neoliberal governmentality, and precaritization.”¹⁷ The processes of subjectivation are inextricably linked to material forms of dispossession; the very construction of the racial subject, for example, is linked to an economic system based on its subjugation.

According to Michael Foucault, the right to housing, shelter and asylum are being distorted and weakened on the justification of security and budgetary purposes of the State, which propounds the idea that certain human lives are indeed expendable.¹⁸ The concept of the border, according to Mezzadra and Neilson, is crucial to the regulation and structuring of “labour, capital, law, and subjectivity.” They propose interpreting the contemporary border as it exists today as a technique for bringing to light how cultures of dispossession and expropriation are inextricably linked to “sovereignty, territory, and governmentality, based on their understanding of neoliberalism.”¹⁹ Therefore, dispossession is utilized as a tool of the neoliberal government to protect capital through the exercise of state power under the guise of

¹⁶ Brenna Bhandar and Davina Bhandar, “Cultures of Dispossession: Rights, Status and Identities”, *Darkmatter journal*, 2016

¹⁷ Athena Athanasiou and Judith Butler, *Dispossession: The Performative in the Political*. Cambridge: Polity, 2013

¹⁸ Foucault, Michel. 2015 [1979]. “Michel Foucault on refugees – a previously untranslated interview from 1979.” *Progressive Geographies* blog, trans. Felix de Montety, September 29.

¹⁹ Mezzadra, Sandro and Brett Neilson. 2013. *Border as Method, or, the Multiplication of Labor*. Durham, NC: Duke University Press.

protecting security interests of the state and the interests of the local population. It involves not only dispossessing an individual belonging to marginalized communities of their land and their means of subsistence but also relies on the “othering” of these communities, pushing forth the narrative of “us vs. them” to further the class, caste and religious divide in order to maintain their political hegemony and control over capital and the material means of production.

Illegal Encroachments in the Indian Context

An encroachment can be described as an illegal intrusion followed by possession of public or private land. According to the Indian Penal Code, Section 441 lays down that “encroachment is when someone enters into or upon property in possession of another with an intent to commit an offence or to threaten, insult or annoy any person in possession of such property, and illegitimately remains there.”²⁰ For the present research question, the encroachments under contention are those that are established on government owned land by the urban poor, that mainly consist of rural migrants that migrate to the city in search of employment.

Over 4 million people in India are homeless, and at least 75 million people live in 'informal settlements' in cities without access to basic utilities like as water and sanitation. A considerable proportion of the rural population also lives in substandard dwellings and lacks access to basic services. These conditions have only been worsened with by the Covid-19 pandemic, which exacerbated the homelessness crises of India owing to the sudden lockdowns that were imposed by the government without any fair warning which lead to the loss of employment, for example migrant daily wage labourers were laid off with no respite, leading to the loss of them and their family's only source of income, forcing these individuals into homelessness in the urban areas they had migrated to in want of employment opportunities.²¹

There is a reason behind the large amount of illegal settlements that have cropped up in the urban areas of the country is simply an opportunity for the marginalized to better their circumstances. The emergence of illegal settlements is a product of the urban poor's desire for steady access to the labour market and less expensive housing options, particularly for incoming rural migrants. Eighty percent of the urban workforce operates in a job market that remains unregulated and unstable owing to the lack of job security. Despite two decades of changes intended at opening up a formerly closed economy and eradicating the vestiges of the

²⁰ Indian Penal Code 1860, s 441

²¹ Housing and Land Rights Network, Forced Evictions in India Report 2020
https://www.hlrn.org.in/documents/Forced_Evictions_2020.pdf

caste system, social hierarchies still dominate the labour market. Membership in distinct family groupings, castes, or regional networks determines occupational options, opportunities, and earnings, especially for the urban poor.²²

Therefore, on examining these “illegal encroachments” one can clearly infer that they are a direct result of the lack of employment for rural people and the excessive cost of living in urban areas. Additionally, a major portion of the urban poor who reside in illegal settlements belong to lower castes and other minority communities which makes them “social pariahs”. The urban poor are discriminated against and are denied access to basic necessities and gainful employment. The clearing of these settlements on the justification that they are illegal occupying public land is a gross oversimplification of the situation.

The urban poor seem to be trapped in a vicious cycle of poverty as they do not have opportunities of employment, and the jobs they are employed in are often low paying, menial jobs where their labour is exploited. Jobs that are determined based on their caste position which eliminates any and all opportunity of social and class mobility. As they lack any meaningful employment opportunities, they do not earn enough to afford housing in urban cities which is yet another indicator of the ever increasing wealth and income inequality in urban areas and the cycle is thereby, reinforced. Hence, they are compulsively driven, as victims of their circumstance, to reside in illegal slum units on public land in order to attain the basic necessity of shelter, housing and livelihood.

Recent Data on Dispossession and Forced Evictions

Every year municipal corporations of urban areas partake in the demolition and clearing of “illegal encroachments” on public land, settlements which are home to millions of people belonging to marginalized communities that make up the urban poor population. They demolish these settlements on the justification of clearing illegal occupation of public land as it interferes with public interest. However, such clearing of illegal settlements fails to address the real root cause of the such settlements being established. Between the 16th of March and the 31st of July 2020, more than 20,000 people were a victim of forced evictions. At least 245 incidents of forced evictions were recorded between March 2020 to July 2021.²³ To put in

²² Dinesh Kataria, “Why Demolishing Slums in Indian Cities is Harmful to the Lives and Livelihood of Impoverished Residents”, December, 2018 <https://scholars.org/contribution/why-demolishing-slums-indian-cities-harmful-lives-and-livelihoods-impoverished>

²³ Housing and Land Rights Network, Forced Evictions in India Report 2020 https://www.hlrn.org.in/documents/Forced_Evictions_2020.pdf

context, these evictions have taken place over the course of two years during a global pandemic which resulted in the government imposing several restrictions, specifically the lockdowns.

Such a dire situation calls for the leadership to act with sensitivity to those most deprived however, even as our health machinery and economic situation were at the brink of failure, the government authorities still carried out demolitions of settlements and dispossessed marginalized communities of their homes. Forced evictions and arbitrary dispossession is a flagrant violation of several internationally recognised human rights standards. The access to adequate housing and shelter is a human right recognised by the United Nations and multiple other Human Rights organizations.

The Housing and Land Rights Network of India (HLRN) in their research into forced evictions in 2020 have found that the forced eviction of a minimum of 173,333 people took place across the country, culminating in the demolition of homes of over 36,812 households/families. Evictions were carried out for a variety of reasons and under various guises, including “slum clearance/encroachment-removal/city-beautification” drives; infrastructure and ostensible development projects, such as “smart city” projects; environmental projects, forest protection, and wildlife conservation; “disaster management” efforts; and other reasons such as political rallies and targeted discrimination. According to HLRN, putative 'environmental' causes displaced the greatest number of persons in 2020, accounting for 49% of the overall number of people evicted.

The vast majority of those who were evicted (87%) did not get any form of government assistance. Only 13% of verified cases of eviction in 2020 for which information is available received resettlement/partial resettlement/some compensation. In the absence of relocation, the majority of those impacted have been forced to make their own arrangements for alternate housing or have been made homeless. The sites to which persons who have received some form of state resettlement have been relocated are isolated and lack suitable housing as well as vital civic and social infrastructure facilities. State officials did not follow due process set by national and international human rights standards in virtually all documented cases of forced eviction. Over 15.5 million people across India are currently faced with the threat of eviction and displacement.

The Jahangirpuri Demolition

On the 16th of April the jahangirpuri region of Delhi witnessed communal riots during a

procession for Hanuman Jayanti and Ram Navami celebrations. Days after, local authorities demolished the properties and homes of those accused of being part in the violence, the majority of them are from poor Muslim families. The demolition drive occurred in the area in northwest New Delhi which was swarmed by paramilitary forces in riot gear and came after Delhi's BJP chief, Adesh Gupta who urged Delhi's municipal corporation to "take action on the illegal construction and encroachment of the rioters."²⁴

The Municipal Corporation provided no prior notice to the residents of Jahangirpuri which is contrary to several judgements of the Supreme Court which has previously held that the non-service of notice is contrary to the principles of natural justice. It was due to the sudden action to demolish the illegal constructions that the Supreme Court gave the order to direct the municipal corporation to maintain status quo and stop the demolishing of buildings. However, a number of buildings were demolished even after the order of the Supreme Court was communicated.

A similar demolition operation took place in Khargone, Madhya Pradesh, when a Hindu parade on April 10th was taken out to commemorate Lord Ram's birth anniversary devolved into violence, with Hindu mobs carrying swords and sticks as they marched past Muslim districts and mosques. According to authorities, groups from both tribes began throwing stones at each other soon after. Bulldozers demolished roughly 45 buildings, including residences and shops, in five areas of Khargone the next day. The media reported that many of them, but not all, belonged to Muslims.²⁵

The demolitions of houses in Jahangirpuri and Khargone are reflective of a new practice that has been adopted by the government which appears to be practice of indiscriminately targeting poor Muslim families and dispossessing them of their homes under the guise of clearing "illegal encroachment", especially in areas where there is a majority Muslim population that has been vocal about their opposition towards the governments policies. The recent trend is concerning to say the least as it seeks to punish democratic dissent. Even if there do in fact exist rioters and inciters of violence who reside in these settlements, the razing of their homes is not in accordance with the procedure established by law and contravenes the most basic principles of natural justice. However, government authorities have maintained that such demolishing of

²⁴ <https://www.amnesty.org/en/latest/news/2022/04/india-authorities-must-stop-apparent-unlawful-demolitions-of-largely-muslim-owned-property/>

²⁵ <https://abcnews.go.com/International/wireStory/shops-demolished-indian-capital-communal-violence-84184390>

building with the use of bulldozers is in line with the law when it comes to temporary settlements and was a completely routine procedure not targeted at any specific community.

Landmark Judgements on “Illegal Encroachments” in India

In **Olga Tellis v. Bombay Municipal Corporation**, the Supreme Court of India ruled that forcible evictions are a breach of the rights to life and livelihood, and that the right to livelihood is an equally vital aspect of that right because no one can exist without the means of subsistence, i.e. the means of livelihood. If the right to livelihood is not recognised as a part of the constitutional right to life, the simplest method to deprive someone of their right to life is to take away their means of subsistence. Such deprivation would not only rob life of its effective content and meaning, but it would also render existence unliveable.

However, if the right to livelihood is not considered an element of the right to life, such deprivation would not have to be done in line with legal procedures. That which, apart from what makes life liveable, makes it feasible to live, must be considered an intrinsic component of the right to life. If you take away someone's right to a living, you've taken away their life. Indeed, this explains the large-scale migration of rural people to urban areas. They migrate because there is no way for them to survive in their villages. The right to life under Article 21 encompasses the right to livelihood and shelter, which entitles the right-holder to notice and hearing prior to evictions, as well as access to rehabilitation.²⁶

In **Ajay Maken v. Union of India**, a case involving the eviction of 5,000 slum dwellers from railway land, the Delhi high court ruled that appropriate enumeration of those whose homes were demolished was not carried out, and that their right to sufficient accommodation and rehabilitation could not be denied. The High Court of Delhi further held that the right to housing encompasses a wide range of rights that go beyond simply having a roof over one's head. It encompasses the right to work, the right to health, the right to education, and the right to food, as well as the right to safe drinking water, sanitation, and transportation.²⁷

In **Sudama Singh v. Government of Delhi**, the High Court of Delhi highlighted the deprivation of human rights caused by forced evictions and held that “What very often is overlooked is that when a family living in a Jhuggi is forcibly evicted, each member loses a

²⁶ 1985 SCC (3) 545

²⁷ (2015) 7 SCC 1 / W.P. (C) 11616/2015, High Court of Delhi

“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.”

The Petitioners were accused of encroaching on public land since their settlements were located on a "Right of Way," according to respondents. The Delhi High Court doubted the existence of any policy designating and defining a "**Right of Way**." Even if a "Right of Way" existed, the Court reasoned, it could not apply to Petitioners who had lived on a specific piece of open ground for decades. Furthermore, the Court found that Respondents failed to provide a systematic method for determining which residents were qualified for relocation assistance.²⁸

The Court also stated that Delhi's government initiatives should be geared toward rehabilitating and removing slum people rather than increasing homelessness. The Court found that housing was critical to human well-being and physical, mental, and emotional development, applying a broad definition of the right to shelter. Finally, the Court determined that the right to shelter is included in the constitutional right to life (article 21).

It also cited several international documents that recognize the state's legal obligation to support the right to shelter (e.g., Article 25(1) of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social, and Cultural Rights). The Court followed the CESCR's interpretation of General Comment 7, which viewed forceful evictions as a violation of the ICESCR, and the Commission on Human Rights' interpretation of such evictions as a violation of human rights.

At least 200,000 families have been displaced by illegal demolitions carried out under the pretence of municipal beautification and development since 2006. These cases have brought together civil society organisations focusing on land rights, homelessness, and discrimination against Dalits, Muslims and other marginalised groups. The judgement has been widely disseminated and holds great promise for ensuring that state governments enact eviction policies that are consistent with human rights obligations. It also serves as the basis for numerous subsequent right to shelter petitions filed throughout Delhi, particularly with regard to the language regarding the importance of conducting proper resident surveys and providing relocation rehabilitation prior to evictions and demolitions.

²⁸ 168 (2010) DLT 218.

Conclusion

Possession of land in India is intrinsically linked with the caste, class and religion an individual is born into. When we as a nation are faced with a problem such as that of illegal encroachments on public land, we have to stop taking a static approach in tackling the issue. Simply clearing of settlements does nothing but add to the plight of the urban poor that have already been marginalized by society. In order to effectively reduce the number of illegal encroachments, the government and public authorities must truly imbibe the spirit of our sacrosanct constitution, our fundamental right to equality and to life and the socialistic ideals that were laid down in our directive principles of state policy.

The government has to approach a problem as nuanced as this with sensitivity, and have to recognise that migrants and people belonging to marginalized communities do not build such illegal constructions and encroach upon public land with the intent of evading the law. Their reasons behind occupying public land is quite the contrary in actuality as it is the product of necessity. The urban poor aren't looking to elude the authorities to cut down their building cost, or by bribing officials to increase their profits such as the builders and landowners of the bourgeoisie class. All that the urban poor are guilty of is trying to avail the basic human right to shelter and housing which is necessary to realise one's right to life secured under Article 21 of the Indian Constitution.

If encroachments are required to be removed from government owned land in order to use the land in the development of the land for the benefit of the greater public, then better alternatives must be sought. Marginalized communities residing in illegal encroachments are not second class citizens, their lives and livelihoods are not expendable at the cost of the "betterment" of the city. Can we truly claim to be developing our cities and municipalities when a large part of our population is at the brink of homelessness and abject poverty without any respite from the government? These "slums" are themselves units of production, they contribute to society economically and cannot be written off as unproductive tools that are holding back development as they quite literally are the reason why our cities are still functioning.

When demolishing illegal encroachments, reasonable prior notice must be given to the inhabitants and such demolishment must be conducted in a manner that is prescribed law so as to not become arbitrary. The government should also prepare a comprehensive plan for the resettlement and rehabilitation of those they are dispossessing as such government action

results in the uprooting of entire lives and communities, it has a ripple effect and the people whose livelihoods depend upon these settlements cannot be abandoned by the government that is meant to serve and protect all the people of this country equally.

As more long term measures, the public authorities should devise policies which involve the granting of land rights to such marginalized communities. They should work alongside developers to build cheap and affordable housing while also investing in community living and income/employment generating projects. The issue of illegal encroachments is one that must be tackled at a systemic level, and it is the duty of the government in line with the judgements of the supreme court and our constitutional ideals to provide people of marginalized communities with the right to adequate housing and the right to livelihood. It is an inalienable human right and a failure to secure the same is in contravention to our the fundamental principles upon which our nation was founded.

On examining the jahangirpuri demolition and other recent demolitions across the country over the past two years, another area that must be addressed is the use of the justification of clearing illegal settlements in order to target people belonging to certain marginalized communities. Such discriminative tactics of the authorities contradicts every constitutional ideal and cannot be allowed to persist. Dissent is an essential part of well-functioning democracy, and the threat of depriving one of their livelihood if they speak out against a ruling party's policies sets an incredibly dangerous precedent. Parallels can be drawn with the dispossession, displacement and settler colonialist policies which the Israeli government has adopted with regards to Palestine and her people. This practice is a flagrant violation of the rule of law and must be rejected vehemently by the courts of this country before it becomes common place and an accepted manner of oppressing minority communities.

Therefore, the concept of possession in India has been convoluted with the distinctions in society based on caste, class and religion. The authorities in India have adopted a seemingly anti-poor attitude towards the possession of land by marginalized communities in urban areas. And dispossessing marginalized communities of their land is inextricably linked to their identity and the amount of social capital they possess. The marginalized are an easy scapegoat for the failings of the government on a systemic level to generate employment and provide its people with the basic human right to adequate housing and livelihood. To conclude, illegal encroachments are not the problem, the real problem is our inability as a society to confront

our own biases and our anti-poor sentiments. At the end of the day, the party in power is a reflection of its population.