
RECONCILING THE RIGHT TO SHELTER WITH PROPERTY RIGHTS: A CONSTITUTIONAL ANALYSIS OF SLUM REHABILITATION IN BANGALORE

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ABSTRACT

This paper aims to examine the constitutional tension between the Right to Shelter under Article 21 and the Right to Property under Article 300A in the context of state-led slum demolitions in Bangalore. The main argument of this paper is that contemporary urban governance has proven to disproportionately prioritize land commodification and redevelopment over the dignity of the marginalised communities that have settled there.

Through a doctrinal and case-based analysis of eviction drives in Ejipura, Kariyammana, Agrahara and Ganganagar, the paper depicts how procedural safeguards and rehabilitation frameworks remain inconsistently implemented, which resurfaced a much larger issue – constitutional guarantees which remain largely illusory at the ground level. Further, it critiques the structural deficiencies of the Karnataka Slum Areas (Improvement and

Clearance) Act, 1973, targeting the absence of effective enforcement mechanisms and lack of accountability structures.

Drawing on the evolving jurisprudence surrounding the “Right to the City,” through this paper, I advocate for the establishment of an independent statutory regulatory body to oversee evictions, ensure timely rehabilitations and facilitate access to legal remedies in order to prevent arbitrary state action. Ultimately, the paper equips a rights-based framework for urban development and seeks to reconcile property governance with constitutional dignity, urban citizenship and substantive housing justice.

INTRODUCTION:

The very meaning of Property, in its most intimate form, extends far beyond a mere legal entitlement, and can often symbolise a person's home – a space of identity, safety and dignity. Across cultures, religions and legal systems, the sanctity of one's home is greatly emphasized, making the loss of housing not just a material loss of shelter but rather a disruption of one's right to life – livelihood, earn a living, lead a life with dignity etc.

Caught in the rat race for urbanization, most metropolitan Indian cities choke at the competing forces of rapid urban development and deepening socio-economic inequality. This fosters a disturbing contrast – where enclaves of high-end infrastructure co-exist with densely populated poverty ridden informal settlements. This problem is exacerbated by rapid urbanization and slum demolitions, where these housing colonies constructed by migrant labourers are treated as encroachments. Further, their demolitions are typically justified under the pretexts of redevelopment, public order, or environmental protection. This reflects, at its core, a deep imbalance – disrupting the constitutional framework governing housing rights and property in India, which is predicated on the balance between individual liberty, social justice and state power.

This paper aims to explore the constitutional tensions that have existed, and continue to exist, between the Right to Shelter guaranteed by Article 21¹, and the Right to Property under Article 300A² To be more precise, I argue that, while the Constitution recognises the Right to Housing and Shelter as part of Right to Life under Article 21, thereby enshrining upon it the stature of Fundamental Rights, slum rehabilitation policies and state led demolitions seem to disproportionately favour land commodification, private ownership, development and urban planning. To further substantiate my argument, I will be using Bangalore as the focal point of this paper, with special reference to Slum Demolition in the areas of R.P Colony Ejipura, Kariyammana Agrahara and Ganganagar, to name a few. I believe that, despite recognition of shelter as a fundamental right, implementation on the ground remains inconsistent and opaque.

The law on this matter is simple. While Article 21 of the Indian Constitution guarantees the Right to Life and Personal Liberty,³ which has further been interpreted, through various

¹ Constitution of India 1950, Art 21

² Constitution of India 1950, Art 300A

³ Constitution of India 1950, Art 21

landmark judgements such as *Olga Tellis vs Bombay Municipal Corporation*, to include the Right to Livelihood and Shelter.⁴

On the other hand, Article 300A, inserted by the 44th Constitutional Amendment, provides that no person shall be deprived of their property, saved by the authority of law.⁵

While the stature of the Right to Property has been reduced from that of a Fundamental Right to a Constitutional Right, it is still important for there to be an equilibrium between these rights in order to ensure equitable housing to all – including slum dwellers.

Further, Article 39(b) of the Indian Constitution also becomes relevant since it mandates that State policy must be directed towards ensuring the distribution of ownership and control of material resources in a manner that subserves the common good.⁶

These articles are relevant in underscoring and scrutinizing the tensions and interplay between the individual's claim to dignity, personal liberty through shelter and property, and the State's authority to regulate this property under "public interest".

CASE STUDY – BANGALORE SLUM DEMOLITIONS

In the context of the city of Bangalore, we can see the tension between the Right to shelter and Property oriented urban development play out broadly through three major eviction incidents – Ejipura EWS Quarters (2013), Kariyammana Agrahara (2020), and Ganganagar (2021)

Ejipura:

The Ejipura case began with a state led affordable housing project for a certain section of the society, known as the Economically Weaker Sections (EWS). However, with the passing of time, the land included in the project, appreciated in commercial value, and the Bruhat Bangalore Mahanagara Palike (BBMP) entered into a "Public-Private Partnership" with a private company called Maverick Holdings. This resulted in the forceful eviction of over 5,000 residents, including dwellers and allottees, during a demolition drive by BBMP bulldozers. The evicted "residents" were promised flats in the Sulikunte village, about 16km away from

⁴ *Olga Tellis vs Bombay Municipal Corporation of India*, 1986 AIR 180

⁵ Constitution of India 1950, Art 300A

⁶ Constitution of India 1950, Art 39(b),

Ejipura. Moreover, the Karnataka High Court issued a directive mandating relocation, and basic amenities like water and electricity. However, implementation remains weak. Allotment was delayed for up to as late as 9 years after the incident. For the families that did manage to move into the allotted flats, the living conditions continue to be unimaginable – not only is there no electricity or water, they are forced to pay exorbitant prices for the provision of these services. Moreover, the location chosen is so remote, many residents reported job loss and heightened vulnerability, especially amongst women. This incident was a clear reflection of how the right to property, or in this case, the BBMP's land claim was enforced swiftly, while the right to shelter under article 21 was both acknowledged too late and implemented too weakly.⁷

The Kariyammana Agrahara evictions of 2020 involved the demolition of makeshift homes of migrant labourers based on erroneous and unverified claims that they were illegal Bangladesh immigrants.⁸ The action, unauthorised and executed without court orders, primarily by goons, were later condemned as unconstitutional by the Karnataka High Court, in the case of *People's Union for Civil Liberties (PUCL) vs State of Karnataka*. The court further emphasized due process and affirmed that any action based on a misguided and false identification as immigrants, through appearance and suspicion alone, not authorised identity cards was unacceptable. The court further stayed the eviction and ordered immediate compensation of Rs. 43,100 per affected family and ordered the state to formulate a long-term rehabilitation plan.⁹

The Ganganagar eviction (2021) primarily involved “extra-legal” demolition of a slum by a local MLA and associates. This action once again lacked any legal sanction, bypassed court procedure and was potentially politically motivated. Further, the eviction involved violence and intimidation, and many residents belonged to marginalized communities. While several police complaints against this incident were filed under the relevant statutes of SC/ST Prevention of Atrocities Act, there was no judicial intervention or official response.¹⁰

⁷ The Hindu, 'Lives in limbo six years after Ejipura evictions' (22 January 2019)<https://www.thehindu.com/news/cities/bangalore/lives-in-limbo-six-years-after-ejipuraevictions/article26030584.ece> accessed 4 May 2025.

⁸ The Hindu, 'HC restrains eviction of occupants of sheds in Bellandur' (23 January 2020)<https://www.thehindu.com/news/national/karnataka/hc-restrains-eviction-of-occupants-of-sheds-inbellandur/article30623815.ece> accessed 4 May 2025.

⁹ *People's Union for Civil Liberties vs State of Karnataka*, W.P 1285 2020

¹⁰ Forced Evictions in India in 2020: A Grave Human Rights Crisis During the Pandemic, Housing and Land Rights Network, 2021, Shivani Chaudhary, September 2021

Together, these cases display a troubling pattern – the dehumanization of slum dwellers through forceful evictions that are carried out with no procedural safeguards, legal sanctity, and rehabilitation, if any, is either delayed or unfulfilled – thereby exposing the fact that constitutional recognition and upliftment of fundamental rights are meaningless unless they are followed with proper implementation.

FALLACIES IN THE KARNATAKA SLUM FRAMEWORK – Analysing the Karnataka Slum Areas (Improvement and Clearance) Act, 1973¹¹

While the act aims to balance slum improvement with rehabilitation, I argue that it's practical implementation unveils serious structural flaws. One such gap is the distinction between notified and unnotified slums.

Chapter VI of the Act becomes relevant, since it briefly describes the government's power to acquire land. Section 17 of the Act empowers the Government to acquire land for slum improvement, redevelopment or rehabilitation by way of publishing in the official Gazette, after providing the affected parties such as the owner, an opportunity to show cause as to why the land must not be acquired.¹² Section 20 of the Act provides for the compensation payable upon acquisition of the land, and states that “it shall be [three hundred] times the property tax payable in respect of such land on the date of publication of the notice referred to in S17”¹³

The recent judgement of *State of Karnataka vs B.R Murali*, while considering the constitutional validity of S.20 of the Act, while directing the High Court to reconsider their opinion on S.20 as unconstitutional, since the provision was made in furtherance of Article 39(b) of the Indian Constitution, which provides for the equitable distribution of material resources to subserve common good, thereby conferring protection under Article 31C.¹⁴ I find this judgement problematic on two notions – firstly, since 39(b) discusses equitable distribution of material resources in a manner that subserves common good, there is a general lack of interpretation on “material goods” and common goods. I believe that the common good sought to be achieved in this context, is ensuring redevelopment of slums and ensuring housing equity. However, providing an overarching protective umbrella to a provision simply because it aims to further an undefined, uninterpreted common good is problematic in the sense that it is susceptible to

¹¹ Karnataka Slum Areas (Improvement and Clearance) Act, 1973

¹² Karnataka Slum Areas (Improvement and Clearance) Act, 1973, S.17,

¹³ Karnataka Slum Areas (Improvement and Clearance) Act, 1973 S.20,

¹⁴ *State of Karnataka vs B.R Murali* 2022 Latest Caselaw 589 SC

being misused to justify slum clearance that possibly only benefits the commercial interests of the state and private owners, while sacrificing individual fundamental rights and constitutional dignity.

As mentioned in the case of *K.T Plantation vs State of Karnataka*, the compensation offered must be just, fair and reasonable, in alignment with Article 300A. I believe the formula must be revisited in such a manner that the “land losers” including evicted slum dwellers, are compensated in a way where they are given the benefit of the appreciated value of land.¹⁵

Further, and herein lies the crux of my argument – there is no provision in the Act that provides for any enforcing authority that oversees and ensures this compensation is affected, or any grievance redressal committee. This, coupled with the fact that most slum dwellers belong to economically and socially marginalized communities – therefore, do not have access to education or legal aid, or really any means to enforce this promise.

The reality is that, while provisions are given protection in the name of “common good”, that common good is hardly ever achieved if it’s proper execution and implementation is not guaranteed. In this context, if the common good is equitable housing and slum redevelopment, then without an independent body that oversees and ensures post eviction rehabilitation, this common good may never materialise.

REFRAMING URBAN CITIZENSHIP – A RIGHTS-BASED APPROACH

What can be done?

It is undeniable that rapidly urbanising cities like Bengaluru, are facing an overwhelming slum crisis – one that is often met with state led demolitions and forced evictions, which do nothing but displace the problem, instead of resolving it. In response to this systematic failure, I argue for the urgent establishment of an independent regulatory body that ensures compliance with post eviction conditions such as housing allotments, fair compensation and liveable conditions, ensuring that all actions are taken in alignment with the constitutional promise of dignified urban citizenship as under Article 21.

Such a body should, ideally, operate autonomously, with statutory authority and insulation from

¹⁵ *K.T Plantation vs State of Karnataka* (2011) 9 SCC 1

political influence to unscathed exercise of power, accountability, oversight and most importantly, keep a check on arbitrary or unauthorised state actions. Its objective should be clear – preventing unauthorised demolitions, ensuring due process and addressing the widespread delays in justice and rehabilitation that currently plague urban eviction practices.

Further, this proposed body must adopt an evictee focused approach – grounded in principles of inclusivity, empowerment and access to justice. Functioning somewhat similar to that of a clinic, the body should actively engage with the evicted communities and truly understand their situation, educate them about their rights and provide access to free legal aid, and have an active grievance redressal mechanism that is both accessible and efficient.

I believe that the proposed body, with its functions, would not only serve as a procedural safeguard but as a vehicle to advance substantive justice, shifting the paradigm from top-down enforcement to a more rights-based participation.

I would like to premise my proposed solution in the “Rights to the City” jurisprudence, which is developed upon below.

Right to the City – An Evolving Jurisprudence

An essential yet overlooked dimension in the sphere of housing rights, especially in the Indian context, is the evolving discourse around “Right to the City” (RTTC.) While this dimension is rooted in international law, it was formally recognized and gained constitutional interpretation in the case of *Ajay Maken vs Union of India*, RTTC represents an evolutionary departure from viewing shelter merely as a physical space, to understanding it as a political, social and moral claim to urban belonging. Borrowed from David Harvey’s interpretation of the same, Professor Upendra Baxi refers to RTTC as “The idea that the RTTC is a right to change ourselves by changing the City.”¹⁶

The court, inspired by Baxi’s interpretation, discusses RTTC as an extension and elaboration of the already existing core elements of Right to Life and Shelter under Article 21 – to include the evolving basic amenities of urban population, and prioritising the housing needs of such

¹⁶ Upendra Baxi, ‘A Philosophical Reading to the Right to the City’ in *Urban Policies and the Right to the City in India: Rights, Responsibilities and Citizenship* (UNESCO and Centre de Sciences Humaines 2011).

population should be imperative for a state committed to social welfare and development. ¹⁷

I find myself in agreement with the court's interpretation of the inclusion of slum dwellers in "right to the city" as they also contribute to social and economic life of a city, and therefore, are well within their rights to have access to resources and basic amenities without any discrimination etc, thereby giving them the ability to change and transform the city. As mentioned above, it is undeniable that many cities in India, including Bengaluru, are choking due to mass urbanization and migration. I firmly believe the disequilibrium between property rights, individual rights and the state's power to evict and acquire land can be balanced by embracing the "Right to City" as part of the Constitution and adapting the proposed independent regulatory body in spirit and in furtherance of this right.

*"When property right is properly traced in the bosom of right to life and personal liberty, it is bereft of mischiefs"*¹⁸

¹⁷ *Ajay Maken vs Union of India* 2019 SCC OnLine Del 7618

¹⁸ A. Lakshminath, 'Tracing Right to Property in the Bosom of Right to Life and Personal Liberty: Comparative Reflection on Recent Constitutional Developments in America, Canada and India' (2015) 57(1) *Journal of the Indian Law Institute* 1 <https://www.jstor.org/stable/43951621> accessed 4 May 2025.