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DEMOLITION DRIVE

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Even as the poor are kept teetering on the precipice of demolition and destruction of habitat, the assumption of powers by the state that can be exercised selectively and arbitrarily, based on a legality that it manufactures, has continued to flourish in contradiction of the inclusive interpretations developed in human rights jurisprudence. The right to housing has been rendered invisible, even non-existent, in this exertion of power, and the evolving meaning of ‘housing’ and ‘adequate housing’, and the injunction in the matter of forced evictions has been thrown into a cauldron of callous neglect.

Slums, in common parlance, are settlements where the urban poor live. Epithets such as ‘squatters’ and ‘encroachers’, and attributes such as ‘illegality’ and ‘ineligibility’ characterise perceptions about the lives and habitations of slum dwellers. While casting the slum dwellers into a stereotype, dirt, criminality, pilferage and their abetment of slumlords to prise public lands for unconscionable gain, are most routinely caricatured. These are the descriptions imposed on slum dwellers by those who do not live in their midst.

An alternative adjectival construction of the slum dwellers would represent them as service providers who keep urban inhabitants in home, health and happiness; persons and communities aspiring to fuller citizenship by seeking to utilise the economic, educational and social opportunities that exist in the cities. Slum dwellers can be described as migrant workers who build up cities for those who can afford to buy what they build; who add to the glory of the state every time an Asian Games or a Commonwealth Games happens; or in the development of a metro or reclamation; industrial hands, whose labour is recognised, but not their need for residence when a city is planned, or the plan is implemented. To at least 30 per cent of almost any city’s population, ‘slum’ is simply ‘home’.

In law, a ‘slum’ is something else. A ‘slum area’ is “any area (where) buildings in that area: (a) are in any respect unfit for human habitation; or (b) 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, detrimental to safety, health or morals”, once it is so notified in the official gazette. The mere existence of these characteristics will not do; it has to be notified to be a slum area.

In determining whether a building is unfit for human habitation, it will be tested to find out if it is wanting in terms of: (i) repair; (ii) stability; (iii) freedom from damp; (iv) natural light and air; (v) water supply; (vi) drainage and sanitary conveniences; (vii) facilities for storage, preparation and cooking of food and for the disposal of waste water.

This is how the Slum Areas (Improvement and Clearance) Act, 1956 defines a slum area. This is a central law that applies only to certain union territories, but the states too have laws that are near-identical, or imperfect, clones.

It is instructive to revisit why this law was made. In the ‘long title’ to the 1956 Act, parliament said it was “An Act to provide for the improvement and clearance of the slum areas... and for the protection of tenants in such areas.” In 1990, the Law Commission of India in its 138th Report which recommended “legislative protection for slum and pavement dwellers” explained the logic of the 1956 Act and its various versions that states had enacted:

The existing slum clearance legislations enacted by different states by and large focus on protection of tenants of privately owned uninhabitable chawls, owners whereof are not interested even in maintaining the same in habitable conditions, inasmuch as these are liable to collapse and result in loss of life and/or are rendered unfit for human habitation on account of falling in disrepair and in order to remedy prevailing insanitary conditions giving rise to diseases and epidemics (p 26).

So it transpired that most laws made to deal with slums provided for the re-induction of the tenant after repair, refurbishment or reconstruction of the dilapidated or dangerous structure. In any event, it was almost always required that a “prescribed authority” must be approached to give permission to evict the tenant from a slum, and in addition, as in the Gujarat law:

S 17 (4) “In granting or refusing to grant (permission for eviction of tenants), the prescribed authority shall take into account the following factors, namely:

(a) whether alternative accommodation within the means of the tenant would be available to him if he were evicted;...”

None of this applies when the tag of ‘illegality’ or ‘encroachment’ is attached to a set of habitations. A slum in law, it may be reiterated, is, therefore, not a slum as understood by users of non-legal language. It is the control that municipal corporations have over ‘public’ lands, and the central government has over ‘public premises’¹ that acts as an aid to facilitating demolition and eviction.

There is, in fact, no law that acknowledges the habitations of the urban poor, and included in this neglect are slums as non-lawyers know them, and pavement dwellings. It is this realisation that led to the Law Commission’s *138th Report* being a series of metaphorical exclamations. This report is a period piece, located between *Olga Tellis* (1985), where the Supreme Court recognised the link between livelihood and habitation while yet not willing to go all the way in asserting the rights of slum and pavement dwellers, and *Almitra Patel* (2000), where the Supreme Court infamously likened the resettlement of a slum dweller to rewarding a pickpocket.

In 1990, the Law Commission took it upon itself to “(e)xamine the problem pertaining to the plight of slum and pavement dwellers facing eviction at the hands of the local authorities.”² “The magnitude of the problem”, the chairperson wrote to the minister of law and justice, “can be gauged from the fact that nearly 3.5 crore of citizens of India live in slums and on pavements of metropolitan cities... [Q]uite often their huts are razed to the ground and they are evicted by the local authorities without offering them any alternative facility. The plight of these unfortunate evictees comprising women and children is indescribable. Some legislative protection needs to be provided to them to ensure that they are not evicted without offering them an alternative facility unless it is virtually impossible to do so.”³

Wending its way through a profile of slums and slum dwellers, municipal laws, the Constitution, court decisions and the extant body of legislation pertaining to slums, the report wound down to the conclusion that:

Presently there exists no legislation affording any protection to the slum and pavement dwellers in the event of their being evicted from these slums or pavements by the local authorities, apart from the fact that there is no social security scheme designed to rehabilitate them on their eviction.

It also said:⁴

There is, therefore, a pressing need, in the light of constitutional values, humane considerations and as a matter of social justice, for inserting into our legal system a requirement by way of a central legislation to the effect that before slum dwellers are evicted by local authorities, it shall be the duty of the concerned local authority to provide alternative site, accommodation or facility to such evictees, and providing that pavement dwellers are not disturbed unless it is inevitable to do so in the context of some emergent situation.

[1] See, for, e g, Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

[2] 138th Report, letter of the chairperson to the minister for law and justice.

[3] Ibid.

[4] Ibid, at p 26, para 9.3.

It clarified:⁵

Such alternative accommodation, site or facility offered for rehabilitation shall be within as short a distance as may be reasonably practicable, ... of the place from where the slum dwellers are sought to be evicted.

This is a clear position that the Law Commission took against the exclusion of slum dwellers from city spaces.

The 1990 report of the Law Commission appears to have been given a quiet burial amidst the dusty shelves of the government, for no such law emerged. Instead, in 1993, Justice B N Kirpal, who authored the *Almitra Patel* decision seemed to have started a trend to reverse the *Olga Tellis* empathies when he, along with a brother judge, said in *Lawyers' Cooperative Group Housing Society vs Union of India*:⁶ "It appears that the public exchequer has to be burdened with crores of rupees for providing alternative accommodation to jhuggi dwellers who are trespassers on public land."

In 2000, in *Almitra Patel*, this use of "large areas of public land" for what was considered "private use free of cost" resurfaced. This raises the question of the status of public land, and the uses for which it may legitimately be deployed. There is too the striking fact that while eviction from unauthorised occupation routinely involves elaborate processes in law and in the courts, eviction of the poor from public lands seems to have the barest in the matter of procedure, and peremptory demolition has been able to establish itself as a practice.

Is the state the owner of 'public' land? Or does it hold the land in trust to be used for constitutionally appropriate purposes? The priorities that have emerged over time are testimony to de-prioritising of the needs of the urban poor. *Olga Tellis* holds a position of pre-eminence in housing law. This was a time, in the early 1980s, when the Supreme Court was emerging as a champion of those rendered weak and vulnerable, and the poor was among the court's constituency.

The petition arose out of an announcement made on July 13, 1981 by the chief minister of Maharashtra of which state Bombay (now Mumbai) is the capital, that all pavement dwellers in the city of Bombay were to be evicted forcibly and deported to their respective places of origin or removed to sites outside the city of Bombay. There was a direction to the Commissioner of Police to provide the "necessary assistance" to the Bombay Municipal Council (BMC) to demolish the pavement dwellings and deport the pavement dwellers.⁷ The chief minister's apparent justification for this course of demolition and deportation was: "It is a very inhuman existence. These structures are flimsy and open to the elements. During the monsoon there is no way these people can live comfortably."⁸

The demolitions began, and it is recorded that the BMC put families into transport that would take them out of Bombay towards their places of origin. The demolitions were stayed by an order of the Bombay High Court. It was contended:

that the pavement and slum dwellers resided where they did to be near their places of work. If they were forcibly evicted, they would lose their livelihood along with being de-housed, and this would result in a denial of the right to life, the right to life and the right to work being interdependent.

[5] Ibid, at p 26, para 9.5.

[6] Civil Writ No 267 and CM 464 of 1993 in the Delhi High Court quoted in the *Draft Annual Plan 2000-01* of the MCD, J J Department, p 8.

[7] Though, at first glance, the case seems to be concerned only with pavement dwellers, it in fact develops into a judgment on pavement and slum dwellers.

[8] Cited at p 557.

that the pavement and slum dwellers, numbering about 47.7 lakhs constituted about 50 per cent of the total population of Greater Bombay, that they were the major workforce for Bombay, that they had lived in the hutments for generations, that they had made a significant contribution to the economic life of the city, and it would be unfair and unreasonable to destroy their houses and deport them.

that the non-implementation of the Master Plans of cities had resulted in concentration of business and commercial areas to which the homeless naturally flocked, and the neglect of action under the Urban Land (Ceiling and Regulation) Act 1976,⁹ as also of rural programmes of employment, health, education, transport and communication, could not be made to visit the city's poor.

that the pavement and slum dwellers could not be treated as "trespassers" since they were where they were only on account of economic hardship."

The court's response was eclectic. In one breath, it held: "... we have to consider ... whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does ... If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation." Yet, it is only a person who is deprived of his right to livelihood "except according to procedure established by law" who can challenge the deprivation as offending the right to life conferred by Article 21. The BMC should, then, give notice to the pavement and slum dwellers, and give them a hearing before demolishing their dwellings. So it was that, even as the right to livelihood was recognised as an integral part of the right to life itself, it was quickly shrunk to a minimum procedure of notice and hearing.

The echoes of this position resonate in later decisions, only by then even the procedure is reduced to a grudging formality. So, in 1996, a bench of the Supreme Court warned the state to mount a "constant vigil" against encroachments for:

the longer the delay, the greater will be the danger of permitting the encroachers claiming a semblance of right to obstruct removal of the encroachment. If the encroachment is of recent origin the need to follow the procedure of principle of natural justice could be obviated ... On the other hand, if the corporation allows settlement of encroachers for a long time...necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers.¹⁰

The *Olga Tellis* court represented the issue as a contest between pedestrians and pavement dwellers, which the

[9] This Act was intended to impose a ceiling on urban holdings. "With the growth of population and increasing urbanisation, a need for orderly development of urban areas has also been felt. It is, therefore, considered necessary to take measures for exercising social control over the scarce resource of urban land with a view to ensuring its equitable distribution amongst the various sections and also avoiding speculative transactions relating to land in urban agglomerations." (Statement of Objects and Reasons, *AIR Manual*, Volume 44, 5th edn, 1989:1999, p 780). This Act was repealed in 1999 because it had become "this most potent clog to housing", and "provided copious opportunities" (Statement of Objects and Reasons attached to the 1998 Bill). So, the Act as passed in 1999 allowed those who had managed to hold on to possession of the land, contrary to the law, to retain it (section 3(2)). The Act has to be adopted by each state to come into effect in that state, in conformity with the constitutional norms of federalism.

[10] *Ahmedabad Municipal Corporation vs Nawab Khan Gulab Khan* (1997) 11 SCC 121 at 130, emphasis added. The Madras High Court expressly followed this dictum in *T Ramasamy Poojari vs Tahsildar* (2000), 3 Madras Law Journal 845, asserting the power of precedent. In the meantime, the *Olga Tellis* bench had reiterated its position in *K Chandru vs State of Tamil Nadu* (1985) 3 SCC 536, pertaining to Madras city.

latter definitively lost. Competing claims have been the themes of other litigation too. In *Bombay Environmental Action Group (BEAG) vs A R Bharati*,¹¹ it was the Sanjay Gandhi National Park which was seen as threatened by encroaching slum dwellers. In *Almitra Patel vs Union of India*,¹² the court developed the contours of a contest between garbage management in Delhi and slums. The slum dweller, of course, was the unvarying loser. The spate of demolitions that have been visited on the slum dweller in Mumbai recently take strength from the legal terrain lost to the slum dwellers, and ignore the cry of constitutionality and inclusiveness that emanated from the Law Commission in 1990.

The *Almitra Patel* decision is especially significant for its understanding of public interest, and of the obligation to pay for land. The petition in *Almitra Patel* was not about slums and slum dwellings at all. It was about garbage disposal in the metropolises. Slums were brought in as the court's agenda, by portraying slums as the reason for the generation of "garbage and solid waste"! This time round, clearing up of slums was not so subtly equated with the agenda of cleaning up the city. Even as the court castigated the process of resettlement as amounting to rewarding a pickpocket, for the slum dweller would be getting an alternative site in place of public land they had been using 'free of cost', the court had to deal with another ticklish issue of free land versus paid for land in relation to garbage disposal and landfills.

The Municipal Corporation of Delhi (MCD) is responsible for garbage disposal, and the court had directed the MCD to identify and prepare "a sufficient number of landfills". But the sites were not available, because the land owning agencies in Delhi, including the Delhi Development Authority and the government of the national capital territory of Delhi, were demanding market value for the land, which would cost more than Rs 40 lakh per acre of land. The court had to intervene to ask the other agencies of the state to hand over land to the MCD free of cost. For, "keeping Delhi clean", the court said, "is a governmental function... It is the duty of all concerned to see that landfill sites are provided in the interest of public health. Providing landfill sites is not a commercial venture, which is being undertaken by MCD... Not providing the same because MCD is unable to pay an exorbitant amount is understandable. Landfill site has to be provided and it is wholly immaterial which governmental agency or local authority has to pay the price for it."¹³ So, "The sites so identified shall be handed over to MCD and/or NDMC within two weeks of the identification, free from all encumbrances and without MCD or NDMC having to make any payment in respect thereof."¹⁴

This is how it came to pass that, in one decision of the Supreme Court, the two constituencies of the court – garbage and the slum dweller – found themselves being so differently treated. The legality of the poor finding a residence within the city has thus, and therefore, become dependent on their paying capacity. (This of course does not acknowledge the many costs that the poor do pay, especially since illegalised existences are inevitably expensive.) And given the cost of land in cities, most denizens would need the state to use its persuasive and coercive powers to make land affordable. The group housing societies in Delhi, for instance, stand testimony to this state intervention, where the state agency bought the land in land acquisition proceedings and redistributed it to clusters of people who could form themselves into a group and summon the resources to construct multistoreyed apartments.

India has a Constitution that has an inclusive agenda. That is, every person in the territory of India counts, with citizens having an edge over others. But, when the capacity to purchase becomes the determining factor of who will, and who will not, have the right to urban spaces, there is an incapacity that gets built into the lives of the country's impoverished and the poor. The existence of the poor then is kept in a constant state of illegality, with 'rightlessness' being foisted upon them. There is an admission in the 10th Plan Document that runs like this:¹⁵

Urban housing shortage at the beginning of the Tenth Plan has been assessed to be 8.89 million units. As much as 90 per cent of the shortfall pertains to the urban poor, and is attributable (among other reasons) to ... [non] provision of housing to slum dwellers. In urban

[11] Writ Petition No 305 of 1995 in the Bombay high court.

[12] (2000) 1 SCALE 568.

[13] *Almitra Patel vs Union of India* (2002) 2 SCC 679 at 686.

[14] *Ibid*, at p 688.

[15] Tenth Plan Document, para 1.80.

areas, the problem becomes complex due to two factors: the high cost of land, and the lack of access to institutional credit for workers in the informal sector, including the self-employed. Provision of affordable housing requires allocation of government owned lands, and cross-subsidisation from commercial properties and colonies developed for the affluent, to those for the urban poor.

Despite this setting out of the dysfunctional state in the matter of providing housing, demolitions have become the order of the day. What does this bulldozing of homes mean in the face of a statistic that says that 90 per cent of the housing responsibilities of the state that remain unmet relate to the poor? Plainly, this represents the destruction of housing stock that the poor have created, with no assistance from the state, and despite the inhospitable conditions in many of the areas where they are allowed to set down roots, however temporary the tenure. And this destruction is despite the Planning Commission's apprehension that "[d]uring the Tenth and Eleventh Plan housing shortage would go up further due to population growth, in addition to the backlog of housing shortage in the Ninth Plan".¹⁶ That the state becomes functional only to destroy the homes of the poor makes a mockery of the much-touted goal of "Shelter for All" by 2012..."¹⁷

Demolitions are an assertion of state power. This power is found in the folds of laws which cast the slum dwellers in a twilight zone of illegality in which they may be tacitly permitted to reside till the law, and power are exerted to forcibly evict them. This understanding of state power, however, pretends to an ignorance of state obligation. In the years since the establishment of the United Nations, human rights jurisprudence has been assiduously developed, precisely anticipating the imbalances of power and access. The obligation of the state to 'protect, promote and fulfill' the rights of peoples has become the theme song in the UN's recital. And states, including India, in acknowledgement of the disinterested morality of this jurisprudence, have signed and become parties to documents that spell out rights and obligations. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is one such. It is part of a significant body of international law that has made strides in recognising, and naming, rights, and which does not allow the force of legality to cloud over the legitimacy of human rights. The right to 'adequate housing' is such a right.¹⁸

The committee established under the covenant has adopted a practice of issuing general comments which contextualise the rights that are merely stated in the ICESCR and explains their import. Drawing on a wide range of experiences from around the globe,¹⁹ General Comment 4 interprets the right to housing as not merely being concerned with having a roof over one's head or a commodity, and adds that, "it should be seen as the right to live somewhere in security, peace and dignity".²⁰ "Adequacy" would necessarily include legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility,²¹ location²² and cultural adequacy. "The concept of human dignity and the principle of non-discrimination" are integral to this right.²³ In reporting to the committee, a state is to provide detailed information about the groups within ... society that are vulnerable and disadvantaged with regard to housing, and "include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in 'illegal' settlements, those subject to forced evictions and low-income groups".²⁴ And General Comment 4 acknowledges that "the full enjoyment of other rights – such as the right to freedom of expression,

[16] Ibid at para 1.81.

[17] Ibid.

[18] See Article 11(1) of the ICESCR.

[19] Since 1979, the Committee records in General Comment 4 adopted in 1991, "the committee and its predecessors have examined 75 reports dealing with the right to adequate housing." This is apart from other sources cited in para 2 of General Comment 4.

[20] Ibid, para 7.

[21] 'Within many states parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal' [para 8(e)].

[22] 'Adequate housing must be in a location which allows access to employment options, health care services, schools... This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households' [para 8(f)].

[23] Ibid, para 9.

[24] Ibid, para 13.

the right to freedom of association the right to freedom of residence and the right to participate in public decision-making – is indispensable if the right to adequate housing is to be realised and maintained by all groups in society”.

In 1997, the committee addressed the issue of “forced evictions” in its General Comment 7, where it refined the notion of legality by imposing a prohibition on forced evictions except where it is “in accordance with the law and *in conformity with the provisions of the International Covenants on Human Rights*”.²⁵ This is to be read in conjunction, in particular, with Article 2.1 of the ICESCR which obliges states to use “all appropriate means” to promote the right to adequate housing”.²⁶ Quite simply:²⁷

Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

Reflecting an understanding of what is increasingly in evidence, the committee has reiterated the importance of states reporting on:

*measures taken during, inter alia, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc), ‘beautiful city’ campaigns, etc, which guarantee protection from eviction or guarantee re-housing based on mutual consent, by any persons living on or near to affected sites.*²⁸

These General Comments are significant especially in the distinction they make between legality as enacted by the state, and legitimacy as developed in international human rights law. It is the pragmatism of the state which edges out an understanding that the poor are not illegal out of choice. On the contrary, were they to opt for legality, they would almost invariably find themselves prised out of the possibility by the interplay of penury and power. Even as the poor are kept teetering on the precipice of demolition and destruction of habitat, the assumption of powers by the state that can be exercised selectively, and arbitrarily, based on a legality that it manufactures has continued to flourish, in contradiction of the inclusive interpretations developed in human rights jurisprudence. The right to housing has been rendered invisible, even non-existent, in this exertion of power, and the evolving meaning of ‘housing’ and ‘adequate housing’; and the injunction in the matter of forced evictions has been thrown into a cauldron of callous neglect. It is to this human rights and constitutional vacuum that the urban poor are now being exterminated. A resurrection of the obligations of the state, and construing the potential for legality of the urban poor as the state has constructed it,²⁹ have acquired an urgency with the spate of demolitions that are rendering whole sections of our populace homeless and insecure.

In speaking about the urban poor, it is imperative that we draw a distinction between ‘poverty’ and ‘impoverishment’. “[P]eople are not naturally poor but are made poor”, as Upendra Baxi, inspired by Marx, explains,

[25] General Comment 7, para 3, emphasis added.

[26] Ibid, para 8.

[27] Ibid, para 16.

[28] Ibid, para 20.

[29] See further, Usha Ramanathan, ‘Illegality and Exclusion – Law in the Lives of Slum Dwellers’, International Environment Law Research Centre (IELRC), <http://www.ielrc.org/content/w0402.pdf>.

and impoverishment is a dynamic process of public decision-making in which it is considered just, right and fair that some people may become, or stay, impoverished. These decisions are made by people who hold public power;... (and it is) the non-poor (who) influence and make decisions the result of which is, cumulatively, to make or keep large numbers of 'others' impoverished."³⁰

The condition in which the urban poor find themselves in this rendition, is itself a result of impoverishment. But even if this were to be laid aside as being a hypothesis after the fact, that demolition impoverishes is an incontrovertible fact. The urban poor, who use their enterprise, labour, genius and every opportunity to better their lot, construct their lives through a process that is engraved with uncertainty, and the pitfalls provided by illegality. Yet, they work, study, find creative avenues of fulfilment in the hovels which is all they are allowed to build. The distance between the slums and the apartments and bungalows around them is too wide to bridge, and aspirations often extend only to moving incrementally, with hope and faith pinned on a future generation. Demolition destroys these aspirations, and the possibilities that the urban poor have created for themselves.

When demolitions happen in February, and the children who have worked their way through years of school find themselves on the streets on the eve of their public exams, as happened in the Yamuna Pushta demolitions in 2004, it is a destruction of possibilities. When those 'eligible' for resettlement are cast on to lots which are miles away from where they were, and the schools near the resettlement site are not prepared to receive them, this too is a dashing of legitimate dreams. When a housemaid is exiled to a site 30 kms away from the houses where she has earned trust and stability, this is immiseration. When the daily wager is relegated to a miniscule plot of land that is located 25 kms from the area where recruitment of waged workers happens everyday at 4.30 in the morning, this is the creation of unemployment. When families are declared to be 'ineligible' for relocation – maybe because they do not have the documents to prove they have been resident in the vicinity for long years; maybe because they lack the resources to pay the 'seed' money of Rs 7,500; maybe because they were away at work when the tokens were distributed; maybe because the ration card had expired, and the new card shows too recent a date to make them eligible; maybe because the man is dead and a woman cannot prove herself as being eligible except in extraordinary circumstances – the move to another abandoned spot, uninhabitable and therefore unthreatening to the non-poor when the poor occupy it, is impoverishment. Then there are, of course, the tangible losses that remain in the ruins that the bulldozer leaves behind.

Impoverishment of a citizen cannot be the agenda of any state. There is a logic as to why the poor live in slums, and the state's inaction in the construction of shelter is a part of that logic. The possessions of the poor, their homes, their things, their hopes, their dreams, are treated with no regard when demolition takes over as state policy. The perception that the poor are illegal anyway, so have no rights, has fostered a negation of the right of the slum dweller to be recognised, and considered, as a human person. Slum demolitions have acquired a synonymous status with clearing spaces, cleaning up cities, beautification, and the rising culture of malls and parking lots. When slum dwellings are destroyed, slum dwellers are expected to vaporise, to vanish, especially the 'ineligible' – while the eligibles are given a choice between exile to miles away, or urban nomadism. But slum dwellers are people and, as people, they are made of flesh and blood, and hopes and desires, and they cannot disappear.

It is this truth of the ineffective state, the distorted priorities and the human being that the slum dweller is, which will have to be confronted. Exclusion and exile of the urban poor will have to be outlawed, and 'demolition', which speaks to destruction, assault, damage to property and to the dignity of the person, will have to be taken out of the lexicon of the state. The legal system, as it exists, casually hands over power to agencies of the state, and this power is being used to prevent the poor from fending off impoverishment. But impoverishment is a constitutional offence, and, recognised as such, institutions that hold and wield power must be re-trained to understand the difference between legality and constitutional legitimacy, and learn to respect the right to life, livelihood and shelter.

[30] Upendra Baxi, 'Introduction' in Upendra Baxi, *Essays on Law and Poverty*, p vi, 1988.

