



iProbono

A BALANCING ACT: HOUSING RIGHTS VS THE ENVIRONMENT

A Session Organised by iProbono India

Session With Stakeholders in the Housing Rights Space

At the event celebrating 10 years of iProbono India on Friday, 17 March, we held a panel discussion on 'A Balancing Act: Housing Right vs The Environment'. The panellists included Gautam Bhan (Associate Dean - School of Human Development and Senior Lead, Academics and Research, Indian Institute of Human Settlements), Manju Menon (Senior Fellow, Centre for Policy Research), Vrinda Bhandari (iProbono Panel Lawyer), Ashok Pandey (Field Coordinator, Housing and Land Rights Network), and Karuvaki Mohanty (Senior Program Officer, iProbono India). The discussion highlighted the ground realities, the existing narrative in courts, and the need to adopt a balanced approach to protect the environment as well as take care of the housing rights of citizens.

Background

A commonly held view about basti residents is that they are 'encroachers' who have no legal right over the land they inhabit. This issue is made worse by the notion that the poor 'pollute' the environment and have no right to housing. Every day, thousands of people relocate to cities in search of employment and a means of subsistence. The right to shelter is part of the right to life as enshrined under Article 21 of the Constitution. However, the state fails to uphold its constitutional duty to provide affordable and adequate housing to people who leave their homes and migrate to metropolitan cities. This renders them homeless and without any form of security. When the state fails to provide them with their basic right to shelter, migrants build their houses on unused plots of land, eventually transforming them into thriving communities.

These communities are being relentlessly destroyed by the land-owning agencies – at times on the pretext of removing encroachments from their land and at times citing environmental concerns. These concerns fail to consider the fact that when we talk about sustainable development of a mega city like Delhi, which comprises 20 million people, we need to cater to the needs and rights of its inhabitants along with protecting the environment.

Over the course of the panel discussion, the following topics were discussed:

Environment vs Rights of Citizens Residing in Bastis

- There is a centralised understanding of what constitutes 'the environment' and how it should be protected. Outside of cities, nature is easily identifiable, making it easy to identify the relationships people have with it. This might not be the case in cities, where those in power decide what constitutes environment and environmental protection. We need a framework that places fairness, justice, and equality at the forefront of the discussion and explains how environmental preservation is achievable in an equitable manner.
- It is pertinent to note that there is now a connection being drawn between pollution and bastis. The narrative around bastis is no longer that they are communities that people have laboured to build but that they are places of dirt and pollution that have a negative impact on the environment. For instance, the thousands of residents living on the Yamuna flood plains, most of whom are informal sector workers or daily wage earners, are believed to be polluting the Yamuna river and are constantly being displaced from their homes under the pretext of environmental protection. This is despite the fact that factories just a few kilometres away from the Yamuna dispose of hazardous chemicals and harmful substances into the river. This narrative needs to be combated with the help of scientific evidence showing that communities near rivers have much less impact on the environment than the industrial waste disposed of by factories.

- Scientific evidence is required to definitively identify who is contributing most to pollution. However, in the recent past, the National Green Tribunal (NGT) has not taken any scientific evidence into consideration before deciding on which factor contributes the most towards polluting the river. Under the recent suo moto case¹, the tribunal has set up a river restoration committee, which has listed the removal of "encroachments/dhobhi ghats" on the Yamuna floodplains as one of the categories in one of its reports. However, for this, the committee hasn't relied upon any scientific evidence or study. As a result, the land-owning agencies are continuing with their relentless demolition of bastis situated on the riverbank.
- When discussing international obligations regarding climate change, we acknowledge that India's socio-economic context is different due to colonisation and the fact that we are still a developing nation and should, therefore, not be saddled with environmental protection standards in a way developed countries are. However, this argument is never extended to a domestic level. Vulnerable informal sector workers residing in bastis are evicted on environmental grounds, impacting their livelihood and pushing them further into poverty. In comparison to this, there is little burden placed on those living more comfortable lives with air-conditioned houses and vehicles.

Changing Judicial Trend: Narrative Shift in Courts

- There is a constant shift in the attitude of the courts. From the 1970s to the early 2000s, the Delhi High Court passed several progressive judgments in relation to the housing rights of residents of informal settlements. For example, in cases of *Ajay Makan*² and *Sudama Singh*³, the court looked at these residents as citizens with dignity and not as encroachers. Dignity was an integral part of the court's jurisprudence, and the Supreme Court did not interfere with these orders. There was a sense that people have lived in these communities, they have built their lives here, so they can't just be shunted away without following due procedure. The Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 came into force as a result of the Delhi High Court and the Supreme Court directing the Delhi Urban Shelter Improvement Board (DUSIB) to formulate policies in relation to bastis. According to the DUSIB policy, if you can prove that you resided in a basti prior to 2016, you are protected.
- Unfortunately, there has been a drastic shift in the court's attitude recently. For example, in the *Gyaspur* eviction case⁴, the Delhi Development Authority only had to claim that the basti is on the Yamuna flood plains and is polluting the river. Despite numerous petitions against this before the Delhi High Court, the homes of people who have lived in the basti for over 40 years were demolished, leaving them homeless overnight.
- The approach of the National Green Tribunal (NGT) is one-dimensional and focuses on environmental factors alone. The problem is that the residents who face the consequences of the NGT's orders directing en masse evictions are not before the NGT to explain their case or advocate for their rights – hearing them is, in fact, beyond the scope of the NGT.
- Pursuant to NGT passing such an order, when the high court is approached, it refrains from passing any contrary orders, stating *inter alia* that environmental protection is beyond its purview.
- It is crucial to understand that NGT orders do not permit the displacement of residents without following the due procedure under the law. The NGT does not deal with nuance or implementation of housing laws/policies; it passes broad orders without considering the facts of each basti impacted by its directions. The question that then arises is whether a high court, as a constitutional court which protects fundamental rights, is bound by a statutory tribunal like the NGT. The onus lies on the high court to decide the balance between the right to environment and the right to shelter, read with the right to live with dignity.

1 *Manoj Mishra v. Union of India & Ors.* OA No. 06 / 2012 and OA No. 300 / 2013

2 *Ajay Maken v. Union of India*, 2019 260 DLT 581 (DB)

3 *Sudama Singh & Others v. Deepak Mohan Spolia & Others*, 2010 168 DLT 218 (DB)

4 Rashid O, *Eviction & Dispossession: Keeping The Poor On Tenterhooks*. 18 Jan 2023. Outlook.

Challenges Faced in Forced Eviction Cases

- As dignity has been increasingly ignored by the court's jurisprudence, there has been an increased importance given to procedural requirements. In cases where there are procedural difficulties, such as certain documents being unavailable, the court has become less flexible about considering other documents that establish proof of residence. Courts are now sticking to a narrow interpretation of eligibility of residents to avail the benefits of the housing policies. This, coupled with the difficulty of collating documents and evidence from the ground within a short period of time, has made the process of filing petitions against housing evictions immensely challenging.
- In cases where urgent legal intervention is required, petitions are filed on behalf of a small number of residents who are able to produce relevant documents immediately in order to save time. The court's point of view, however, is that since only select residents have filed the petitions, the claims of the remaining people are invalid. This is particularly harsh for those residents who surrendered their old documents to government authorities at the time of renewal of their IDs and consequently have no proof of residence beyond a certain date.
- The alternative of advocating with land-owning agencies and local politicians is now ineffective, especially when it comes to a case involving the eviction of a basti on the Yamuna floodplains. This is a consequence of the narrative that residents in these bastis pollute the environment and hamper the beautification of the city, as well as the knowledge of land-owning agencies that basti residents are unlikely to get succour from the courts.

Important Takeaways

- Contrary to the narrative that informal sector workers residing in the bastis near rivers pollute their surroundings, they, in fact, aid in the sustainable development of a city. For example, most of the residents living on the Yamuna floodplains in Delhi are involved in agrarian practices and contribute to Delhi's foodscape. There is a need to strengthen the case for recognition of the existence of these residents and their farming practices along the Yamuna in Delhi.
- The rights of the rural poor and populations living close to nature are easily identifiable as their relationship with nature is visible. However, the rights of the urban poor are mostly ignored, and they are held unduly responsible for polluting the city.
- Informal sector workers migrate to cities in search of work and contribute to their economic development. They provide day-to-day services to the urban population in the form of domestic help, construction services etc. The city, therefore, has a responsibility towards these workers and must provide them with basic facilities including adequate housing.
- Large-scale displacement such as those that have taken place in the past months near the Yamuna floodplains in Delhi has a serious adverse impact on basti residents, their livelihood, health, safety and the education of their children. These displacements do not provide a long-term solution for those they render homeless and may also create a law and order problem in the city.

- NGT's one-dimensional approach towards protecting the environment and generic orders directing the removal of "encroachments" are a cause for concern. The tribunal only decides on the matter of the environment and does not take the housing rights of the citizens into consideration.
- The onus is on the high court as a constitutional court to pass balanced orders, which would balance the environmental needs of a city and the housing rights of its citizens.

Action Points

The panel suggested that, as a collective, we must take steps to address this issue. This includes the following:

- Engage in collaborative efforts with environmentalists and researchers to collate scientific evidence to establish that industrial waste, fumes released by factories, untreated effluents, etc., cause considerable harm to the environment – much more so than the residents of bastis.
- Engage in advocacy efforts with stakeholders to highlight the impact of large-scale evictions of families from their homes.
- File strategic litigation to build pressure on government nodal agencies to follow the due procedure of law, conduct surveys, and provide rehabilitation to residents before displacing them from their homes. For example, we must push DUSIB by filing a petition in the Delhi High Court to conduct surveys to identify more bastis and add them to their list of bastis eligible to access the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015.
- Use storytelling as a tool to change the negative narrative about residents of bastis being "encroachers" and polluting the environment. This can be done through a series of activities like:
 1. Circulating videos and pictures of the impact of illegal evictions
 2. Disseminating human impact stories depicting the contribution of informal sector workers towards the city
 3. Facilitating workshops for stakeholders, including land-owning agencies, state officials, lawyers, judges etc.
- Conduct training sessions for community leaders and fieldworkers on the state housing laws and on how to collect information and documents from basti residents during forced eviction scenarios.
- Conduct awareness sessions in communities and inform them about their housing rights as citizens of a city.

ABOUT OUR PANELLISTS



Gautam Bhan

**Associate Dean- School of Human Development,
Indian Institute for Human Settlement**

Gautam is the Associate Dean - School of Human Development and the Senior Lead - Academics & Research at the Indian Institute of Human Settlements. His work focuses on urban poverty, inequality, social protection, and housing.



Manju Menon

Senior Fellow, Centre for Policy Research

Manju is a Senior Fellow, Centre for Policy Research. She focuses on research, writing, and community projects on environmental justice and the politics of resource rights.



Vrinda Bhandari

Advocate, Supreme Court of India

Vrinda Bhandari works on a variety of digital rights and privacy issues alongside her commercial and criminal law practice. Vrinda is also one of iProbono's Delhi panel lawyers and has represented residents of informal settlements in some of our illegal eviction cases.



Ashok Pandey

Field Coordinator, Housing and Land Rights Network

Ashok Pandey works as a Field Coordinator with our partner organisation Housing and Land Rights Network. He is a dedicated housing rights activist who works closely with communities and has worked with iProbono on some of our housing cases.



Karuvaki Mohanty

Senior Program Officer, iProbono

A lawyer with experience in health and environment law, Karuvaki is responsible for iProbono's housing rights work. She also manages our work in providing legal support to NGOs, and handles our child sexual abuse case work in Rajasthan.