

ALLOCATION OF PROPERTY RIGHTS AND ITS IMPLICATIONS FOR URBAN IMPOVERISHMENT

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I. INTRODUCTION

Evidence of impoverishment and oppression from India compels us to take a good look at what really went wrong. What is the reason that a striking number of children in the country are still dying of hunger and malnutrition, or that India's performance in many human development indicators is worse than Sub-Saharan countries which at least have the excuse of endemic wars, racial clashes etc.?¹ Through the course of this paper we seek to argue that the primary reason for India's horrid story of impoverishment of its masses is the lack of a proper property rights regime.

In section I and II of the paper the problem we seek to raise is that deprivation of a person's capability to acquire property goes on to affect his basic capability to have legal identity, have a valid existence in the eyes of the state, and not be reduced to a nonentity. The inability of the poor to secure property rights severely affects their capabilities in other fields as well. This turmoil is compounded by the current position of right to property under the Constitution of India as a mere constitutional right, instead of a fundamental right, which is coming in the way of compelling the state to take affirmative action for the impoverished. The free exercise of right to property and maximum benefits that could be derived by the poor out of it have been denied in more than one way by the state and the affluent. We seek to prove that the sense of agency and autonomy, that the

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¹ AMARTYA SEN, DEVELOPMENT AS FREEDOM 101 (1999).

endowment of such property rights creates, can go a long way in rectifying the ills of urban impoverishment.

In the subsequent sections we seek to address the viability of urban poverty reduction through conferment of property rights in the poor. We try locating the problem of urban poverty in light of over-urbanization in the context of inadequate property rights and studying the impact of allocating property rights on the urban poor. Provisions of lock in period given under various slum rehabilitation programmes treat the poor like subjects and not citizens: an exemplification of the insidious presumption of malice and incapacity just because they are poor. Thus we also discuss the requirement of ensuring a *Right to the City* for every individual. In the final part we evaluate the *Model Property Rights to Slum Dwellers Bill, 2011*.

II. INTER-RELATIONSHIP BETWEEN PROPERTY RIGHTS AND CAPABILITY APPROACH

Historically, world over, right to property has meant more than merely ‘owning’ a piece of land. Property rights define a social system with its hierarchies and determine the success of an economy by promoting specialization and division of labour through voluntary exchange.² Further, private property provides incentives that stimulate entrepreneurship and capital formation, and facilitate efficient allocation of scarce resources, ultimately contributing to economic development.³ Right to property⁴ has been considered fundamental to individual freedom and economic security by not

² See generally Abhinay Muthoo, *A Model of the Origins of Basic Property Rights*, 49(2) GAMES AND ECON. BEHAVIOR 288, (2003), available at [http://www.wiwi.uni-magdeburg.de/bizecon/material/Muthoo_Origins.of.PR_GEB49\(2\)2004_288-312.pdf](http://www.wiwi.uni-magdeburg.de/bizecon/material/Muthoo_Origins.of.PR_GEB49(2)2004_288-312.pdf).

³ Claudia R. Williamson, *The (Lack of) Impact of Government Land Titling: Case Study Evidence from Rural Peru*, CLAUDIA WILLIAMSON, available at http://www.claudiawilliamson.com/Claudia_Williamson/Research_files/Williamson%20Kerekes%20LackofImpact.pdf (last visited Feb. 16, 2014).

⁴ Freedom of ownership, transfer and rectification over the property.

just scholars like John Locke⁵ and international community⁶ but the Indian constitution makers as well⁷, albeit with certain limits to check abuse. Buildings, contracts, money, retirement funds, wedding alliances, social standing, savings accounts and caste hierarchy,⁸ especially in India, have all inevitably revolved around proportion of land ownership.⁹ A study shows that in India greater amounts of land ownership with the higher castes has led to a greater level of educational attainment and greater access to better-paying jobs or self-employment in business for them.¹⁰ Therefore, as evidence suggests, land ownership has been a crucial agent for economic prosperity, especially, in agrarian societies like India.¹¹

Furthermore, development scholars like Hernando de Soto advocate that formal property rights are essential in poverty reduction and empowerment of the impoverished, especially in developing countries.¹² This is important especially in light of the fact that majority

⁵ *Locke's Political Philosophy*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Jul. 29, 2010), <http://plato.stanford.edu/entries/locke-political/>.

⁶ Universal Declaration of Human Rights, G.A. RES. 217 (III) A, U.N. DOC. A/RES/217(III) (Dec. 10, 1948), art. 17.

⁷ This shall be discussed in greater detail in the second section of the paper.

⁸ See Guilhem Cassan, *Caste Identity Manipulation and Land Ownership in Colonial Punjab*, PARIS SCHOOL OF ECONOMICS, 2 (Sept. 26, 2011), http://parisschoolofeconomics.com/cassan-guilhem/stuff/caste_identity_manipulation_and_land.pdf (Evidence suggest that a few castes were elevated in the caste structure because over the period of time they came to control bigger tracts of land.).

⁹ Sonalde Desai, *Caste in 21st century India: Competing Narratives*, available at ihds.umd.edu/IHDS_papers/Caste.pdf (last visited Nov. 11, 2013) (“*The greater the amount of land a household owns, the greater the possibility of obtaining higher incomes through economies of scale, greater access to credit and greater ability to engage in crop rotation.*”).

¹⁰ Desai *Id.*

¹¹ See generally KAUSHIK BASU, *AGRARIAN QUESTIONS* (1994); Kaushik Basu, Oxford Companion to Economics in India (2007), *cited in* Desai, *Id.*

¹² Michael S. Coffman, *Why Property Rights Matter: How government regulations threaten America*, AMERICAN LAND FOUNDATION, www.discerningtoday.org/PropertyRights3.pdf (last visited Nov. 11, 2013).

of the population of the developing countries, including India, does not have official government-licensed titles over property.¹³ Since one's address is a non-negotiable pre-requisite for a range of services like jury duty, voter registration, taxation, bank account, energy, water or even telephone lines, people with no formal property title are excluded from all these basic amenities and are mere possessors of "*dead capital*", a term coined by de Soto to describe how, without formal property systems, the six potential effects of property are not achieved.¹⁴ Without such systems, transactions of property become onerous, due to difficulty in determination and enforcement of the economic value of property, resulting in a far less networked society and reduced accountability of the relevant authorities. The impoverished are haunted by the inability to use the property, the inability to exclude others from using that property and the inability to transfer the above rights of usage and exclusion to others by consent.¹⁵ This inability to use, own, exclude and transfer property rights gets further compounded when looked at through the lens of capabilities approach.

The capabilities approach, forwarded by Sen,¹⁶ measures social justice in a given society on the yardstick of *freedom to achieve*, a person's capability to do the things he has reason to value. This approach has been widely accepted as a basis for formulation of developmental goals¹⁷, as it makes a shift from means oriented

¹³ HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 39, 43 (2000).

¹⁴ *Id.* (The six potential effects of a formal property system are; (i) Fixing the economic potential of assets (ii) Integrating dispersed information into one system (iii) Making people accountable (iv) Making assets fungible (v) Networking people and (vi) Protecting transactions.).

¹⁵ A. REEVE, *PROPERTY*, 11-12 (1986), *cited in* B.G. Carruthers & Laura Ariovich, *The Sociology of Property Rights*, 30 ANN. REV. SOC. 23, 24 (2004).

¹⁶ *See* Amartya Sen, *Gender and cooperative conflicts* in *PERSISTENT INEQUALITIES: WOMEN AND WORLD DEVELOPMENT* (I. Tinker ed., 1990); *see generally* AMARTYA SEN, *POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION* (1981).

¹⁷ Mirtha R. Muñoz Castillo, *Autonomy as a foundation for human development: A conceptual model to study individual autonomy*, CAPABILITY APPROACH, www.capabilityapproach.

approach to a more evaluative approach.¹⁸ It gives us an opportunity to widen our understanding of development beyond mere economic well-being or *happiness*.¹⁹

Taking the study of capabilities one step further Nussbaum has spelt out a list of *central human capabilities*. This list endorses the ability to hold property as one of the key ingredients for a sense of control over one's environment.²⁰ According to her, the freedom to access a capability such as property opens doors to a wide set of other *functionings* such as the ability to exploit the economic potential of assets, individual accountability, easy access to safe credit, heightened sense of *self respect* in the society and legal identity in the eyes of the state²¹, to name a few.²² This sense of empowerment²³, provided with vesting of property rights, ties up with capability and human rights approach and creates a sense of agency and autonomy among the holders of these rights. It provides them with the capacity to *choose and achieve*, and an opportunity to make judgments about how to deal with that piece of property guided by authentic motivation.²⁴

Building upon Nussbaum's 'sense of control' derived from property Sen propounded the idea of "exchange entitlement" as "*the*

com/pubs/Autonomy%20Muniz.pdf (last visited Nov. 11, 2013); *see also* MARTHA NUSSBAUM, CAPABILITIES AS FUNDAMENTAL ENTITLEMENTS: SEN AND SOCIAL JUSTICE IN CAPABILITIES, FREEDOM AND EQUALITY: AMARTYA SEN'S WORK FROM A GENDER PERSPECTIVE 49 (Agarwal et. al. ed., 2007); *see also* Sabina Alkire, *The Capability Approach to the Quality of Life*, available at www.stiglitz-sen-fitoussi.fr/documents/capability_approach.pdf (last visited Nov. 11, 2013).

¹⁸ AMARTYA SEN, IDEA OF JUSTICE 231 (2009).

¹⁹ Which as observed by Sen can often be a result of *adaptive preferences* of various groups and not a true indicator of utility.

²⁰ NUSSBAUM, *supra* note 17, at 49.

²¹ As ownership of a property is one of the pre requisites of having any identification proof.

²² DE SOTO, *supra* note 13, at 32.

²³ (As will be discussed with example in greater detail in the second section of the paper.).

²⁴ Castillo, *supra* note 17.

set of all the alternative bundles of commodities that a person can acquire in exchange for what he owns”.²⁵ He argues that the benefits that can be derived out of such commodity bundles are not just dependent on the individual but also the on the legal, political, social and economic milieu of the society in question. Such an understanding of property as a capability, more valuable than the possession of any other primary good²⁶ highlights the coupling of disadvantages (both social and legal) that deprivation, active or passive, of a right to property can lead to²⁷

However, while advocating the benefits of such an approach a caveat needs to be attached: “*A narrow sectoral initiative such as granting real property rights to the poor has the potential of empowering the poor, but this broader lens on empowerment and development should also avoid seeing such initiatives as sufficient, “magic bullet” solutions.*”²⁸ A package of public investments are required to ensure proper access to all the infrastructural facilities that are made available to the urban population; such an initiative has been made more necessary with the growing density of population in the urban centers.²⁹ Only with such wholesome investments, will the impoverished be able to pull themselves out of the poverty trap.

III. DEROGATION OF THE RIGHT TO PROPERTY UNDER THE INDIAN CONSTITUTION

Having established the significance of a right to property under the capabilities approach jurisprudence, we now delve into an analysis

²⁵ See generally SEN, *supra* note 1, cited in D. Parthasarathy, *Law, property rights, and social exclusion: A capabilities and entitlements approach to legal pluralism*, available at depot.gdnet.org/newkb/fulltext/parthasarathy.pdf (last visited Nov. 11, 2013).

²⁶ AMARTYA SEN, *RESOURCES, VALUES AND DEVELOPMENT* 323 (1984).

²⁷ J. SACHS, *THE END OF POVERTY* 255, 256 (2005), cited in *Legal Empowerment of the poor: From Concepts to assessments*, US AID, available at pdf.usaid.gov/pdf_docs/PNADM500.pdf (last visited Nov. 11, 2013).

²⁸ *Id.*

²⁹ SACHS, *id.* at 243-256 (explaining that the poor suffer from the lack of six major kinds of capital: Human Capital, Business Capital, Infrastructure, Natural Capital, Public Institutional Capital and Knowledge Capital).

of the treatment accorded to this right by the Indian Constitution and Courts, its origin, development and consequences.

Inspired by the Fifth Amendment of the American Constitution,³⁰ the Indian Constituent Assembly, unlike other hotly contested provisions, unanimously accepted the fundamental nature of right to property and placed it under Part III of the Indian Constitution³¹. However, their prerogative was to structure it in a way that it does not hinder actions taken by the state pursuant to policies of land reforms and social good.³² Thereafter, property was added as a Fundamental Right in the Constitution wherein “*every citizen had the right to acquire, hold and dispose of property*” under Article 19 (1) (f), and the exercise of this could be restricted under Article 31.³³

Soon after independence, the government brought forward various land reform legislations³⁴ to dispossess the zamindars of the huge tracts of land that they had accumulated under the colonial rule. Subsequently, zamindars approached the courts invoking violation of their right to property, and in response the courts struck down the land reform legislations on the grounds of violation of Article 19 (1) (f) and 31 specifically.³⁵ The Parliament then passed the First

³⁰ *Fifth Amendment of the American Constitution*, CORNWELL UNIVERSITY LAW SCHOOL, http://www.law.cornell.edu/constitution/fifth_amendment (last visited Nov. 11, 2013) (“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation”).

³¹ Constituent Assembly Debates, *Interim Report on Fundamental Rights*, III CONSTITUENT ASSEMBLY (May 2, 1947)

³² *Id.*

³³ INDIA CONST., art. 31.

³⁴ See e.g. The Bihar Management of Estates and Tenures Act, 1949, Bihar No. 21 of 1949.

³⁵ See generally *Kameshwar Singh (Darbhanga) v. The Province of Bihar*, A.I.R. 1950 Patna 32; see also *Dwarkadas Srinivas v. The Sholapur Spinning and Weaving Company Ltd.*, A.I.R. 1951 Bombay 86.

Constitution Amendment Act, 1951, which introduced Articles 31 A³⁶, 31 B³⁷ and the Ninth Schedule to the Constitution, to render its land reform agenda immune from the fundamental rights scrutiny. The effect of this amendment was to put thirteen State Acts for land reforms in the Ninth Schedule, thereby allowing acquisition on the grounds of “*public interest*” and “*proper management of the property*” (once any law is put in the ninth schedule it is immune from judicial review³⁸).

Soon after the First Amendment the Fourth Amendment Act, 1953 was passed, altering Article 31³⁹ and introducing Article 31 (2A).⁴⁰ This intervention was prompted by the SC’s review of adequacy of compensation paid for acquisition of property.⁴¹ The amendment in effect barred the Courts from going into the question of adequacy of compensation in cases of property acquisition. In spite of the amendment the SC kept making inquiries into the adequacy of compensation at more occasion than one finding violation of Article 14.⁴² This was followed by the Seventeenth Amendment Act, 1964, which included a number of state land reform legislations in the Ninth Schedule and excluded those from judicial review. Even still the Court’s repeated insistence on “*just equivalent*” compensation⁴³ and non-

³⁶ CONST., *supra* note 33, art. 31A.

³⁷ CONST., *supra* note 33, art. 31B.

³⁸ I.R. Coelho v. State of Tamil Nadu, A.I.R. 2007 S.C. 861, ¶ 151 (“*Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by Constitutional amendments shall be a matter of Constitutional adjudication by examining the nature and extent of infraction of a Fundamental Right by a statute sought to be Constitutionally protected.*”).

³⁹ CONST., *supra* note 33, art. 31 (2) (After the fourth amendment).

⁴⁰ CONST., *supra* note 33, art. 31 (2A).

⁴¹ See generally *State of West Bengal v. Mrs. Bela Banerjee*, A.I.R. 1954 S.C. 170; see also *Dwarkanadas Srinivas v. The Sholapur Spinning and Weaving Company Ltd.*, AIR 1951 Bom 86.

⁴² See *Karimbil Kunhikoman v. The State of Kerala*, 1962 (1) SCR 829; see also *Vajravelu Mudliar v. Special Deputy Collector*, A.I.R. 1965 S.C. 1017.

⁴³ See *Vajravelu Mudliar v. Special Deputy Collector*, A.I.R. 1965 S.C. 1017; see also *Union of India v. Metal Corporation of India Ltd.* A.I.R. 1967 S.C. 634.

arbitrariness⁴⁴ was viewed by the legislature as the *final act of insubordination*. The SC, Justice D. Subba Rao in particular⁴⁵, justifying its incorrigible advent into adjudication of adequacy of compensation paid stated that if the compensation paid by the state was illusory or if the mode of calculation were extraneous to the value of the property, the law could be struck down as a fraud on the power of the legislature.⁴⁶ The Court's insistence on 'potential value and goodwill of the property and value of the unexpired period of long term leases' as factors to be considered in determination of compensation⁴⁷ induced the Twenty Fifth Amendment which replaced "*compensation*" in Article 31(2) with '*amount*' and barred courts from enquiring about the adequacy or mode of payment of the *amount*. This Amendment also inserted Article 31C⁴⁸, which stated that if the purpose behind any law is the realization of principles specified in Article 39 (b) or (c) it could not be challenged in a court of law. With the last nail in the coffin in the form of the Forty Fourth Amendment Act 1978, the Parliament deleted Articles 19 (1) (f) and Article 31 from the Constitution and right to property was relegated to the position of a constitutional right under Article 300A.

⁴⁴ See generally R.C Cooper v. Union of India, 1970 (2) S.C.C. 298 (Bank Nationalization Case). See also I.C Golaknath and Others v. State of Punjab, A.I.R. 1967 S.C. 1647.

⁴⁵ (Not all decisions of the Supreme Court companioned the justifiability of compensation amount); see e.g. State of Gujarat v. Shantilal Mangaldas, A.I.R. 1969 S.C. 624.

⁴⁶ See Union of India v. Metal Corporation of India Ltd., A.I.R. 1967 S.C. 634.

⁴⁷ Bank Nationalization Case, *supra* note 44.

⁴⁸ CONST., *supra* note 33, art 31C (Pre amendment text: "*Saving of laws giving effect to certain directive principles.- Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy: Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.*"); (However, later by the Forty Second Amendment Act 1976, this provision expanded from just CONST., *supra* note 33, art 39 (b) and (c) to "*all or any principles laid down in Part IV*").

A. PUTTING THE CONSTITUTIONAL DISCUSSION IN CONTEXT WITH THE CAPABILITIES JURISPRUDENCE

While right to property has been widely acknowledged as a central human capability,⁴⁹ what should be the breadth of right to property as a central capability? Should this be considered a central capability at all? The role of right to property as an agent of promotion for economic as well as social capabilities has been widely accepted by scholars.⁵⁰ However, it is sometimes argued that property rights are not inviolable and they can be overridden in the favour of distributional equality of capabilities.⁵¹ The Indian Supreme Court in the post-independence era, accorded constitutional protection to laws which facilitated landowners right to hold large properties amassed by bleeding the peasantry white in the colonial era.⁵² Such an interpretation does not seem to go hand in hand with the ideas of social justice that the Constitution-makers had at the back of their minds while formulating Part III of the constitution.⁵³ Many scholars have argued in defense of the SC that it did its best to protect agrarian reforms and disallow concentration of land over the years.⁵⁴ However many others see the relegation of right to property a result of the tension between the two pillars of State, with one reflecting on necessities of following due process and other following an arguably necessary evil of land reforms.⁵⁵ Of import is the rationale for dropping

⁴⁹ NUSSBAUM, *supra* note 17.

⁵⁰ P. SAINATH, EVERYBODY LOVES A GOOD DROUGHT 18 (1996); *see generally* WORLD BANK, WORLD DEVELOPMENT REPORT 2002: BUILDING INSTITUTIONS FOR MARKETS (2002).

⁵¹ SEN, *supra* note 1.

⁵² NUSSBAUM, *supra* note 17 at 45.

⁵³ BINA AGARWAL, A FIELD OF ONE'S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA (1997), *cited in* NUSSBAUM, *supra* note 17.

⁵⁴ M. L. Upadhyaya, *Agrarian Reforms in FIFTY YEARS OF THE SUPREME COURT OF INDIA: ITS GRASP AND REACH* 569, 589 (S. K. Verma & Kusum eds., 2000), *cited in* Surya Deva, *Does The Right To Property Create A Constitutional Tension In Socialist Constitutions: An Analysis With Reference To India And China*, 1 NUJS L. REV. 583, 599.

⁵⁵ Jaivir Singh, *(Un)Constituting Property; The Deconstruction of the of the Right to property in India*, WORKING PAPER SERIES CSLG/WP/05, Centre for the Study of Law and Governance Jawaharlal Nehru University 25 (2004).

the right of property from the list of fundamental rights, as forwarded by the then law minister Shanti Bhushan, was that “vast majority of Indians did not own extensive property to equate the right to property to the more important rights ... [had resulted in curbing] ... the other fundamental rights”.⁵⁶

Initially fundamental rights as a whole were primarily seen a bundle of negative rights. It was primarily this conception of the right to property which was seen as equipping ‘the haves’ to fight the socialist measure of the state for the benefit of the “have nots”. However, over the course of time they have also acquired a strong positive rights character. The positive character of a fundamental right of right to property could now have been used by the poor to shake the government and bureaucracy out of its slumber and take affirmative action of providing ownership rights in property to the poor.⁵⁷ The fundamental and multi-faceted nature of property as discusses in part I of the paper is what makes the relegation of this right as a mere constitutional right problematic. The State continues to antagonize the impoverished by intervening with their property rights for anything which may be classified as “public purpose”, with a very sketchy compensation policy, leading to the sad perpetuation of Naxalism or Maoism as a credible defense against State expropriation.⁵⁸ Therefore, it is our argument that in the process of balancing the tensions of separation of power and striking a bargain the judiciary and the legislature both contributed towards throwing the baby out with the bath waters.

The subsequent section analyzes the implications of this constitutional rigmarole about the status of right to property on urban impoverishment and its inter-relationship with property rights of the

⁵⁶ *Lok Sabha Debates*, 17(15) Sixth Series, Cols 295-302, *cited in* GRANVILLE AUSTIN, *WORKING A DEMOCRATIC CONSTITUTION: THE INDIAN EXPERIENCE* 425, *cited in* Singh, *id.*

⁵⁷ Joshi, *infra* note 68.

⁵⁸ Sanjiv Agarwal, *Turn Clock Back*, *THE STATESMAN* (June 4, 2008), *available at* http://www.goodgovernanceindia.com/turn_clock_back.pdf.

urban poor and socio-economic empowerment. Further, we will address how this derogation of right to property adversely affected the assertion of rights by the poor and marginalized or if it is merely a matter of semantics.

IV. URBAN POVERTY REDUCTION THROUGH PROPERTY RIGHTS FOR THE POOR

The following analysis should be helpful in understanding how ensuring property rights for the poor ought to be beneficial in reducing levels of urban impoverishment:

A. LOCATING THE PROBLEM OF URBAN IMPOVERISHMENT

Before talking of allocation of property rights to alleviate urban impoverishment, it is necessary for us to have an idea of reasons which lend themselves to the aggravation of urban impoverishment. In this section we will look at over-urbanization and inadequacy of property rights as reasons behind urban impoverishment.

a. *In light of Over-urbanization*

Urban areas in the developing countries face the problem of overcrowding or over-urbanization which is a process of concentration of excess population in a limited area, depriving the urban dwellers of adequate means to enjoy basic services.⁵⁹ The impoverished populations in the urban areas are characterized with lack of political and economic power and are thus pushed to the periphery of the city. It is established that rural to urban migration accounts for a major fraction of the urban population explosion.⁶⁰ However, the problems of unemployment and underemployment of this migrant population is the manifestation of the ills of over-

⁵⁹ Chigon Kim & Mark Gottdiener, *Urban Problems in Global Perspective*, in HANDBOOK OF SOCIAL PROBLEMS: A COMPARATIVE INTERNATIONAL PERSPECTIVE 172, 177 (George Ritzer ed., 2004).

⁶⁰ S.E. Findley, *The Third World City: Development Policy and Issues*, in THIRD WORLD CITIES: PROBLEMS, POLICIES, AND PROSPECTS (J.D. Kasarda & A.M. Parnell eds, 1993).

urbanization.⁶¹ Therefore, population growth in cities which are unsupported by proper planning and governance would inevitably result in increasing the incidence of poverty.⁶²

One of the problems which crop up due to such urbanization of poverty is the housing problem. It is not simply shortage of housing in absolute terms which is the trouble. A related problem is that of ensuring a minimum standard of housing. Most of the urban poor are relegated to substandard houses built on illegally occupied land without any access to basic infrastructural facilities. Homelessness becomes another pervasive problem in such scenarios. In addition to the visible manifestation of homelessness, over-urbanization also results in invisible homelessness⁶³, whereby migrant population conceal their homelessness by sharing residences with friends or family who have an establishment in the city. Both result in erosion of bargaining power of the urban poor and transfer them to a culture of poverty⁶⁴ whereby the urban poor remain in the quagmire of lack of access to basic infrastructure, poor conditions of living, lack of access to credit facilities, and other such deprivations.⁶⁵

b. *In the context of inadequate property rights*

Slums and squatter settlements have proliferated as a result of lack of adequate property rights for the economically weaker sections in the urban population. Insecurity of tenure has been a defining characteristic of a slum household, as per the UN-Habitat.⁶⁶

⁶¹ KEMPE R. HOPE, DEVELOPMENT IN THE THIRD WORLD: FROM POLICY FAILURE TO POLICY REFORM 92 (1996).

⁶² Kim & Gottdiener, *supra* note 59 at 179.

⁶³ Kim & Gottdiener, *supra* note 59 at 184.

⁶⁴ Oscar Lewis, *The Culture of Poverty* (1966), http://www.ignaciodarnaude.com/textos_diversos/Lewis,Oscar,The%20Culture%20of%20Poverty.pdf (last visited Nov. 11, 2013).

⁶⁵ Kim & Gottdiener, *supra* note 59 at 187.

⁶⁶ *Challenge to Slums*, UN-HABITAT (2003), available at <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=1156> (last visited Nov. 11, 2013).

Tenure insecurity and absence of property rights with the slum dwellers are the result of lack of proper urban planning and zoning of land for the economically weaker sections. Improper town planning creates unavailability of land for housing the poor in urban areas and thus, deprives the poor of their housing rights. The Master Plans of most cities suffer from “implementation backlog”.⁶⁷ For instance, the Delhi Development Authority had failed to meet its housing target for the economically weaker section during the period of 1981 to 2001 and the new Master Plan-2021 now suffers from a huge backlog of about 4 lakh dwelling units.⁶⁸ Also these Plans are not inclusive enough. The long-winded procedural requirements of obtaining construction and occupancy permits push the economically weaker classes to deviate from them and set up unplanned settlements.⁶⁹ These issues with the Master Plans result in rise in proliferation of slums and “illegal” settlements. Thus housing is made available only to those who can afford it, which necessarily keeps the urban poor at a disadvantage.⁷⁰ The predicament is further intensified by the blind eye turned towards the inefficient decision-making process which pins the burden of illegal settlement on the economically weaker sections, but refuses to acknowledge the driving force behind such settlements.⁷¹

As a consequence of this proliferation of illegal settlements, the residents of these colonies suffer insecurity of tenure in the property occupied by them. This leads to the imminent danger of forced eviction for residents of such settlements. The practice of forced eviction *prima facie* violates the right to adequate housing.⁷²

⁶⁷ Usha Ramanathan, *Illegality and the Urban Poor*, 41 ECON. & POL. WKLY. 3193, 3195 (2006).

⁶⁸ Anamika Joshi, *Modifying Master Plan-2021*, DELHI MASTER PLAN 2021 (July 19, 2013), <http://delhi-masterplan.com/modifying-master-plan-2021/>.

⁶⁹ World Bank, *Land, Houses and Urban Service*, <http://go.worldbank.org/M0LW0G4900> (last visited Nov. 20, 2012).

⁷⁰ Usha Ramanathan, *Demolition Drive*, 40 ECON. & POL. WKLY 2908, 2910 (2005).

⁷¹ Ramanathan *supra* note 67 at 3196.

⁷² Advisory Group on Forced Evictions (AGFE), *Finding solutions to forced evictions worldwide: A priority to meet the MDGs and implement the Habitat Agenda*, UN-HABITAT

However, there is a near-absence of laws which recognize this right to housing. Therefore, while the State has the power to assert its right of eminent domain through acts of demolition to clear spaces, we find a dearth of laws to safeguard people from the misuse of such power.⁷³ International law has made significant attempts at recognizing such a right through the ICESCR. General Comment No. 7 discussed the right to adequate housing, and it was observed that:

“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.”⁷⁴

Therefore, while the right of the urban poor to adequate housing has attained legitimacy in international human rights law, but it has not been recognized within the domestic legislations.⁷⁵ Even the judiciary has been reluctant in recognizing the right to adequate housing. Even where it does recognize the failure of the government to devise housing schemes for the urban poor, it dismisses the argument for provision of alternative housing facilities for “encroachers”.⁷⁶ Hence, the urban poor residing in slums face the threat of eviction by the State on the ground that residents in most slums are illegal occupiers of the land.

(Apr. 2007), http://www.unhabitat.org/downloads/docs/5152_68295_AGFE_Executive_Summary_Report_April_2007.pdf.

⁷³ Slum Areas (Improvement and Clearance) Act, 1956, No. 96 of 1956 [29th December, 1956], §. 7.

⁷⁴ U.N. High Commissioner for Human Rights, *CESCR General Comment No. 7, The right to adequate housing (Art.11.1): forced evictions*, U.N. Doc. E/1998/22 (May 20, 1997), available at <http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50>.

⁷⁵ Ramanathan *supra* note 70 at 2911.

⁷⁶ See Almitra H. Patel and Anr. v. Union Of India, A.I.R. 1998 S.C. 993; see also Kalyani Menon-Sen, *'Better to Have Died Than to Live Like This': Women and Evictions in Delhi*, 41 ECON. & POL. WKLY 1969, 1974 (2006).

B. IMPACT OF ALLOCATING PROPERTY RIGHTS TO THE URBAN POOR

As mentioned above, one of the consequences that the urban poor suffer as a result of proliferation of slums and illegal settlements is that of tenure insecurity. Allocating property rights to the urban poor can act as an incentive for them to take greater interest in the overall development of their settlements, and would in turn make urban planning more participatory in nature.

a. *Tenure security and its adequacy*

Allocating property rights would entail allocating a bundle of rights to the urban poor living in slums which they lack at present. Such a bundle of rights would include not just a right to be allocated property, but also the right of tenure security over such property, and the right to access basic amenities such as health services, education, and employment opportunities. It is thus apparent that property rights cannot be allocated to urban poor in a simplistic manner as there are varied social and institutional complexities which can have an impact on property titling and which have an effect on the legal entitlement to the property.⁷⁷

Property titling can be an important method to alleviate urban poverty by increasing access to credit facilities. Hernando de Soto has argued that giving formal title deeds to the land would make the poor believe that they have ownership to their land and would give them the means to raise finance for investment in entrepreneurial pursuits.⁷⁸ The economic importance of recognizing property rights by means of formal deeds is that this increases certainty and thereby incentivizes investments in the existing resources.⁷⁹ Property which is not formally recognized by means of records and titles is left outside the financial market and this inhibits entrepreneurship as it does not allow the holder of such unrecognized property access to capital.

⁷⁷ Edward Robbins, *Formalisation of Land and Housing Tenure to empower the poor: Simple Nostrum or Complex Challenge?* in RIGHTS AND LEGAL EMPOWERMENT IN ERADICATING POVERTY 175, 177 (Dan Banik ed., 2008).

⁷⁸ DE SOTO, *supra* note 13 at 39.

⁷⁹ DE SOTO, *supra* note 13 at 39.

However, there may be significant barriers to such increase in credit access for people using their low-income housing as collateral for credit facilities. Studies conducted on Peruvian population given nationwide property entitlements have revealed such a contrarian position.⁸⁰ It was found that loans from private sectors had not increased after titles were secured because the transaction costs involved in recovering the loans were much higher than the average loan sanctioned for small enterprises.⁸¹ But this does not belie the argument that individuals having legal entitlements to property have less fear of eviction, harassment and other kinds of fear.⁸² It supports the argument that there is an increase in the investment incentive to develop the existing residential units, in terms of renovations, and this results in a steady increase in the collateral value of the property.⁸³ Investment in property and housing would also ensure that the urban poor have social security in terms of increased long-term savings in real property.⁸⁴ These effects of property titling may be helpful in reduction of urban impoverishment to a great extent, coupled with the linkages in terms of education, health and infrastructural facilities which would enhance the investments in human capital of the impoverished population.

The major concern, in relation to formal security of tenure for the urban poor that has been raised by several scholars is that of the need to secure legal entitlements when there are existing informal *de facto* entitlements of the residents of slums. There have been arguments to show how property in informal settlements has been

⁸⁰ Erica Field & Maximo Torero, *Do Property Titles Increase Credit Access Among the Urban Poor? Evidence from a Nationwide Titling Program* (Mar. 2006), http://www.economics.harvard.edu/files/faculty/18_FieldToreroocs.pdf.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Erica Field, *Property rights and investment in urban slums*, HARVARD EDUCATION, <http://scholar.harvard.edu/files/field/files/fieldinvestjeea-2.pdf> (last visited Feb. 2, 2014).

⁸⁴ See Sebastian Galiani & Ernesto Schargrodsky, *Property Rights for the Poor: Effects of Land Titling*, SOCIAL SCIENCE RESEARCH NETWORK, <http://ssrn.com/abstract=1544578> (last visited Nov. 20, 2012).

transacted informally without any record in official systems.⁸⁵ Also, formal titling systems can be expensive and time-consuming and hence, the residents of informal settlements would be more interested in securing *de facto* tenure which would protect them from eviction.⁸⁶ It is true that slum-dwellers often invest in their houses even without formal recognition of their housing rights based on the perception that they are protected from eviction.⁸⁷ However, it is being argued that simply having *de facto* security of tenure does not render the need for legal entitlements for the urban poor living in slums redundant. It must also be kept in mind that informal enforcement systems, for instance an absentee owner of the land who functions with the help of local goons, may often turn into “control” over the populations, thereby potentially aggravating their distress.⁸⁸ We cannot discount the importance of recognizing *de facto* tenure security towards poverty alleviation of urban poor, but such *de facto* tenure security should be regarded as a step in the direction of giving full legal status to the urban poor.⁸⁹

Ensuring legal entitlement and secure tenure over property would thus incentivize greater investments both in terms of housing as well as greater investment in infrastructures and amenities. Most informal settlements would have developed connections in terms of livelihoods and homes. Indiscriminate slum clearance would be counterproductive as most relocated populations end up moving back to their earlier places of residence because of the livelihoods that

⁸⁵ See generally Geoffrey Payne, Alain Durand-Lasserve & Carole Rakodi, *The Limits of Land Titling and Home Ownership*, 21(2) ENVIRONEMENT AND URBANIZATION 443 (Sept. 29, 2009), available at <http://eau.sagepub.com/content/21/2/443.full.pdf+html>.

⁸⁶ UN-HABITAT, *supra* note 66.

⁸⁷ Payne, Durand-Lasserve & Rakodi, *supra* note 85.

⁸⁸ Carruthers & Ariovich, *supra* note 15 at 29.

⁸⁹ Darshini Mahadevia, *Tenure security and urban social protection – findings and policy implications in India*, SOCIAL PROTECTION IN ASIA: WORKING PAPER SERIES 2010, available at http://www.unescap.org/sdd/meetings/egm_sp_oct2010/Background/Tenure-security-India-by-darshini-mahadevia.pdf (last visited Jan. 24, 2013).

they had set up in these places. Moreover, the urban poor must be looked at as an addition to the economic system of the cities instead of being treated as a burden. In fact, several occupations such as construction workers, domestic helps, and a gamut of other services, are provided by people who reside in the urban slums. If they are relocated at a place far away from where they had originally set up their homes then, not only would their livelihood be disrupted but also the functioning of the urban economy would be hampered by way of increased transaction cost of commuting. To avoid such additional costs, it is in the interest of the development of the cities that the slum residents are given a legal right to remain on the land and incentivize greater investments in the property that they occupy.⁹⁰

b. *A model of allocation of property rights: ensuring a right to the city*

The question of the extent of assignment of property rights is a difficult question because, as has been discussed above, such assignment needs to account for extraneous conditions in order to be effective. One such condition would be to account for the density of slums.⁹¹ It is quite futile to allocate property to an individual if the ownership is limited to tiny plots of land, the upkeep of which would become cumbersome in the face of lack of proper access to services.⁹² However, this concern cannot impinge upon the “right to the city”⁹³ available to every citizen. The right to city may be described as a right to urban life, involving “individualization in socialization” as discussed by Lefebvre, meaning that every individual should have a right to expression in a collective scenario such that every individual’s aspirations are imbibed in the collective aspiration. In order to do this, every city needs to undertake periodic urban renewal strategies. An urban renewal strategy would lack impetus without proper political

⁹⁰ *What to do about slums*, THE ECONOMIST (Oct. 9, 2003), available at <http://www.economist.com/node/2122064>.

⁹¹ Robbins, *supra* note 77 at 185.

⁹² Robbins, *supra* note 77 at 185.

⁹³ See generally HENRY LEFEBVRE, WRITINGS ON CITIES (Elenor Kofman & Elizabeth Lebas trans., 1995).

and social support. Thus a right to the city, in order to be truly efficacious, must involve mechanisms which would not result in overcrowding. Granting a right to property – property which may be translated into meaningful uses – would be one of the several components of ensuring a right to the city.

The *favelas* in Brazil would be a good example to show how the right to the city is reconciled with the concern of over-urbanization. Every citizen of the urban area has a right to participate in the city planning.⁹⁴ Therefore efficient town planning through development of well-chalked out Master Plans is mandated in Article 182 of the Constitution of Brazil.⁹⁵ Also, Article 183 provides with a scheme which allows individuals, occupying private lands of a minimum of 250 sq.m. for five years without interruption or opposition and using it as his home, to acquire ownership over that land.⁹⁶ Similarly, it is important to note that there are populations in Indian cities which are being continually pushed to the peripheries due to recurring resettlements in the name of development.⁹⁷ These longstanding populations steeped in poverty due to the exclusive city growth, need ownership rights over their property in order to have a meaningful say in the town planning.

Keeping this need in mind the Delhi Government had announced a plan for regularizing 917 unauthorized colonies and recognizing property rights in 45 resettlement colonies. Most of the unauthorized colonies had come up in the 1950s and over the years, have become more congested due to vertical growth.⁹⁸ The change in

⁹⁴ See Ngai Pindell, *Finding a Right to the City: Exploring Property and Community in Brazil and in the United States*, 39 VAND. J. TRANSNAT'L L. 435 (2006) (One of the principles of the right to the city.).

⁹⁵ BRAZIL CONST., C.F. ch. II, art. 182 (“Urban property performs its social function when it meets the fundamental requirements for the ordainment of the city as set forth in the master plan.”).

⁹⁶ *Id.* art. 183.

⁹⁷ Shoumojit Banerjee, *Last stand at Sion Kolinada — where the spectre of demolition looms*, THE HINDU (Jun. 4, 2012), available at <http://www.thehindu.com/news/states/article3487219.ecc>.

⁹⁸ G.V. Bhatnagar, *Ownership rights may bring peace of mind to people in Jhuggi Jhopri*, THE

ownership pattern would result in a hike in property rates as the occupiers would have to pay a percentage of the circle rates attached to the land, either 5 per cent of the circle rate if they are original allottees or their legal heirs, or 30 per cent if they have subsequently purchased the property.⁹⁹ For those who have purchased or occupied such vacant plot after March 2007, however, the payment is the full circle rate.¹⁰⁰ This would allow the residents to raise loans with the collateral of secure tenure, or sell or divide floors,¹⁰¹ which would ensure greater economic power in the hands of the residents¹⁰².

However, even though such regularization would bring housing security for the residents and would afford “peace of mind”, it needs to be seen if any substantial changes in the living conditions are being made. Small plot-sizes, lack of open spaces for health facilities, parks and schools, and overall poor living conditions persist in resettlement colonies, rendering the recognition of property rights futile. Even in regularized erstwhile unauthorized colonies, illegal constructions often result in qualitative deterioration of the properties.¹⁰³ Also, the resettlement colonies are generally on the outskirts of the main city, and therefore residents face the problem of commuting from their place of residence to their workplace. Such difficulties make it necessary to reconsider the property regularization and recognition of property rights such that residents in the slums are not unthinkingly resettled, but the public lands where they have settled over the years are allowed to be recognized as areas of settlement. Urban poor must be given a sense of security of tenure in the homes that they have

HINDU (Sept. 17, 2012), *available at* <http://www.thehindu.com/news/cities/Delhi/ownership-rights-may-bring-peace-of-mind-to-people-in-jhuggi-jhopri/article3906442.ece>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Bhatnagar, *supra* note 98.

¹⁰² G.V. Bhatnagar, *Just how will regularization change their lives?*, THE HINDU (Sept. 3, 2012), *available at* <http://www.thehindu.com/news/cities/Delhi/just-how-will-regularisation-change-their-lives/article3853572.ece>.

¹⁰³ *Id.*

already built on these public lands and municipal authorities must be mandated to protect them from indignity and inhuman eviction.¹⁰⁴ Further, *in situ* slum improvement has been recommended in the National Urban Housing and Habitat Policy, 2007.¹⁰⁵

Another concern with regard to urbanization is development of Master Plans. A debate exists as to who should be given the task of developing Master Plans, local municipal bodies or a Development Authority without significant localized influence. The proponents of the latter authority argue that municipal bodies may not be able to develop comprehensive and an integrated plan for the entire city.¹⁰⁶ However, it is clear that the planning process is often not participatory and Master Plans, in the absence of timely preparation of Zonal Plans, are not dynamic.¹⁰⁷ Due to the dynamic nature of urbanization in India, the content of the Master Plans also need to be refurbished periodically to meet the changing needs. It is often argued that mixed land use should be allowed in addition to pooling of land, as segregation of residential uses from commercial and institutional uses is not suitable.¹⁰⁸ The drafting

¹⁰⁴ Gautam Bhan, *It's Their World Too*, HINDUSTAN TIMES (Sept. 16, 2012), available at <http://www.hindustantimes.com/News-Feed/ColumnsOthers/It-s-their-world-too/Article1-930983.aspx>.

¹⁰⁵ MINISTRY OF HOUSING AND URBAN POVERTY ALLEVIATION, *National Urban Housing and Habitat Policy* (2007), available at <http://mhupa.gov.in/policies/ducpa/HousingPolicy2007.pdf>; see also Smita Gupta, *No displacement, resettle slum dwellers where they live: NAC*, THE HINDU (Oct. 22, 2011), available at <http://www.thehindu.com/news/national/no-displacement-resettle-slum-dwellers-where-they-live-nac/article2560147.ece>.

¹⁰⁶ Smriti Kak Ramachandran, *Who should draft Delhi Master Plan – DDA or municipalities?*, THE HINDU (Sept. 20, 2012), available at <http://www.thehindu.com/news/cities/Delhi/who-should-draft-delhi-master-plan-dda-or-municipalities/article3917058.ece> (quoting Ms. Sheila Dixit, Chief Minister of Delhi).

¹⁰⁷ NATIONAL RESOURCE CENTRE & SCHOOL OF PLANNING AND ARCHITECTURE, ACCESS TO LAND FOR HOUSING THE URBAN POOR: OPPORTUNITIES & CHALLENGES 6 (Sept. 22, 2008) available at www.spa.ac.in/nrc/pwslt_urban_poor_sept_2008.pdf.

¹⁰⁸ *Id.*; see also *DDA Master Plan experts call for low-rise high-density development, mixed-land use*, THE HINDU (Sept. 25, 2012), available at <http://www.thehindu.com/news/cities/Delhi/dda-master-plan-experts-call-for-lowrise-highdensity-development-mixedland-use/article3934576.ece>.

process of the Master Plans should be more inclusive taking account of the needs of the urban poor and thereby recognizing their right to the city.

The pressing need of making the urban poor a part of the urban planning process makes it necessary for the State to ensure that they have a right to own the property that they occupy in the cities. The capability to influence the decision-making process behind city planning which comes with greater certainty in terms of tenure security is essential for a meaningful urban life for the poor. Relegation of the right to property from being a fundamental right to a mere constitutional right proves as a deterrent towards this goal. The relegation which was thought necessary to facilitate redistribution of property, to stop its accumulation in few hands, is now proving to be contrary to the purpose of poverty eradication. The right was initially relegated in order to stop accumulation of property in the hands of a wealthy few. But it is being argued that ensuring a fundamental right to property would also help in achieving the ultimate purpose of redistribution. Redistribution of property will have a real effect when the inhabitants have the real capability to enjoy their property in whichever manner they please. It is true that there may arise problems of hold-outs and increased transaction costs during any public project, or lower valuations of property by dishonest buyers through means of coercion – typical problems of a market economy. However, the State may be better at formulating mechanisms to reduce such asymmetries of the economy, instead of directly evicting and displacing people.¹⁰⁹ This certainty that even the State cannot take away the right to property and residence would ensure that the urban poor have a meaningful say in urban planning processes. A mere constitutional right, which the State can take away at any time by exercising its power of eminent domain, cannot guarantee this certainty.

It may even be concluded that without giving property rights to the urban impoverished, in effect, the State is allowing

¹⁰⁹ See generally Sanjiv Agarwal, *The Truth about Land Wars*, GOOD GOVERNANCE INDIA, <http://www.goodgovernanceindia.com/pdf/for-other-writings-link.pdf> (last visited Nov. 13, 2013).

negative externalities to arise, such as irregular constructions endangering the lives of the people residing in those areas. However, if they are allocated property rights, these externalities in the form of social costs would get internalized. In a situation where individuals have property rights, if the State focuses on reducing externalities to the greatest extent possible, rational actors would take decisions which are socially more efficient, which would result in comprehensive social development.¹¹⁰ Therefore, ensuring a fundamental right to property to the urban population, especially the impoverished and economically weaker sections, would help in allowing development of all. Allowing for individual property rights to gain the status of a fundamental right, protected under the Constitution of India would give greater impetus to this right of agency to the urban impoverished.

C. EVALUATION OF THE MODEL PROPERTY RIGHTS TO SLUM DWELLERS BILL, 2011

The Model Property Rights to Slum Dwellers Bill circulated by the Centre was aimed at improving the condition of housing for the urban poor. Under Section 3, the Model Bill makes provisions for allocating property rights to the slum-dwellers. Every slum-dweller would get a legal entitlement which would be made in the name of the female head or in the joint name of the male head and his wife. Property rights have been sought to be regulated by making the dwelling space non-transferable by way of sale, lease, gift, mortgage, or in any other manner for 7 years after the allotment. It is argued that this would take care of the problem of outflow of capital from the community and would reduce the chances of absentee landlordism. Also, such transfer would be null and void and the allotment of such dwelling space would be cancelled as on the date of the transfer. However, the dwelling space can be mortgaged for the purpose of raising finance by way of housing loans.

¹¹⁰ Carruthers & Ariovich, *supra* note 15 at 33.

However, under this model, eligible slum-dwellers would be recognized based on a cut-off date.¹¹¹ The ineligible slum-dwellers would not be allotted a dwelling space, but will be provided with an all-weather space, on a rental basis. This needs further scrutiny, as there could be powerful players who would lay claim on the land and further sub-lease it without securing proper facilities to the poor.¹¹² The legislation thus fails to address the issue of security of tenure for such urban poor. This seems to be contrary to the stated objective of facilitating inclusive growth and slum-free cities. In order to meet this social objective it is necessary to expand the definition to encompass the maximum number of beneficiaries.¹¹³ Surprisingly, the State of Odisha which introduced the Odisha Property Rights to Slum Dwellers and Prevention of New Slums Bill, 2012, has altogether left out this provision for the ineligible slum-dwellers even though the cut-off date is still applicable.¹¹⁴

This limited coverage of beneficiaries is also apparent if one closely examines Section 3 of the Model Bill. The provision is meant for any “landless person living in a slum area in any city or urban area”. The definition of a slum area as given under Section 2(28) of the Model Bill indicates a compact settlement of at least twenty households. This would mean that a large chunk of the urban homeless poor, who do not live in any such settlement such as pavement dwellers, would not be able to benefit from this legislation.¹¹⁵ Moreover,

¹¹¹ Cl. 3(1), Model Property Rights to Slum-Dwellers Bill, 2011 (Bill, 2011), *available at* http://www.credai.org/circular%20pdf/MHUPA_MODEL_PROPERTY_RIGHTS_TO_SLUM_DWELLERS_ACT_2011-24-5-11.pdf.

¹¹² See Robbins, *supra* note 77 at 185.

¹¹³ Editorial, *Empowering slum dwellers*, THE HINDU (Jun. 16, 2011), *available at* <http://www.thehindu.com/opinion/editorial/article2107401.ece>.

¹¹⁴ Odisha Property Rights to Slum Dwellers and Prevention of New Slums Bill, 2012 (Bill, 2012), *available at* <http://www.indiaenvironmentportal.org.in/files/file/Odisha%20Property%20Rights%20to%20Slum%20Dwellers%20Bill%202012.pdf>.

¹¹⁵ Nisha Kumar Kulkarni, *Revisiting Property Rights for Slum-Dwellers* (Feb. 26, 2013), <http://urbanpoverty.intellecap.com/?p=701>.

the Model Bill can be criticized on the ground that it puts a moratorium of 7 years after allotment on any transfer of such property, other than for purposes of mortgage for housing loans. The capabilities approach as propounded by Amartya Sen, which talks about ensuring capabilities to individuals to achieve functions, is adversely affected.¹¹⁶ If we allow the moratorium to remain for 7 years, we are in fact, eating into the autonomy of individuals, while the purpose of ensuring property rights is the opposite. Individuals should have the capability to diversify their risk-taking capabilities and not limit themselves only to housing finances. By restricting the urban poor from raising capital by mortgaging or transferring the property for any other purposes than housing loans, the Bill is limiting them from using their single most important leverage. This results in the reduction of the collateral value of the property and creates disincentives to investment. The objective behind such moratorium may be benign, that the urban poor do not squander away their property, but we need to ensure that such processes do not limit individual freedom. By restricting formal access to credit facilities, the Bill may in effect end up reinforcing informal practices through which the urban poor would want to raise finances which would mean that the Bill ends up being regressive in nature.¹¹⁷

Despite these concerns, the Union Government is keen on pushing for the implementation of these provisions by the State Governments through Executive Orders till the Bill is passed.¹¹⁸ The provisions should undergo further scrutiny before they are implemented in order to be effective. Moreover, the need of the day is to ensure that this legislation is tempered down to the extent

¹¹⁶ (Refer to the discussion in Part I of the paper).

¹¹⁷ Brenda Murphy, *Opening the Gates to the Formal and Legal City: Formal access to Land and Housing by the urban poor – some lessons from Johannesburg and Dar es Salaam* 13, WORKING PAPER NO. 08-85, London School of Economics and Political Science (2008), available at <http://www2.lse.ac.uk/internationalDevelopment/pdf/WP/WP85.pdf>.

¹¹⁸ *Centre wants property rights for slum dwellers*, THE INDIAN EXPRESS (Oct. 31, 2012), available at <http://www.indianexpress.com/news/centre-wants-property-rights-for-slum-dwellers/1024226>.

required to ensure that the practices of demolition and forced eviction are not reinforced through its provisions. However, clause 2 of Section 17¹¹⁹ seems to validate such actions against any encroachment or illegal structures. However, instead of having a blanket provision, we need to find ways to regularize such structures on a case to case basis. The only way that we can avoid the hazards of irregular constructions is if the urban development authorities take proactive measures to ensure a steadily improving standard of living in these settlements, instead of washing their hands off after allotting dwelling spaces to the urban poor. The Model Bill fails miserably in ensuring effective recognition of these additional rights which would make the property rights meaningful. Till such time, the legislation will only remain a lip service to the issue of alleviation of urban impoverishment.

In conclusion, it is being argued that simply housing development and property entitlements would not result in a holistic alleviation of poverty for the urban poor. Investments in urban housing for the economically weaker sections would involve provision of services such as schools, health services, access to public utilities, etc. Such a network of investment can be developed if the slum-dwellers, empowered with property rights, are transformed into collectives which can use the land as a collateral for raising finance or lure in private players to make investments in such initiatives.¹²⁰ However, there are detractors of this argument who cite the futility of the Slum Rehabilitation Authority of Mumbai, set up in 1995, with the aim of roping in private developers who would build dwelling units in excess of the building norms. These excess units would be

¹¹⁹ Cl. 17(2) Odisha Bill, *supra* note 114 (“It shall be the duty of the Government to ensure that there is no encroachment or construction of an illegal structure on Government Land, and shall for this purpose by order authorize the officers by designation for each urban area, who shall report in writing such encroachment or violation to the Competent Authority to evict such encroachers or to demolish such illegal structure or to take such action as necessary.”).

¹²⁰ REHMAN SHOBHAN, CHALLENGING THE INJUSTICE OF POVERTY 295 (2005); *see also* Ruhi Bhasin & Apurva, *L-G says bring in pvt builders to develop colonies, Sheila disagrees*, THE INDIAN EXPRESS (Oct. 22, 2012), available at <http://www.indianexpress.com/news/lg-says-bring-in-pvt-builders-to-develop-colonies-sheila-disagrees/1020175/0>.

sold and the funds generated would subsidize slum reconstruction.¹²¹ However, it failed due to lack of transparency and ended up denying the urban poor the benefits of housing.

V. CONCLUSION

In the words of United Nations Development Programme;

*“Property rights are the singular most important tangible link that establish ties of rights, obligations, responsibilities and recognition in any society. It is the basis on which a State recognizes a person’s legal identity, grants voting rights or provides access to basic amenities. These basic opportunities can be a powerful means to climb out of poverty. A fully functional and equitable property rights system - with effective regulation and oversight by the State authorities - can ensure that assets can be legally transferred from one person to another and can help people to access a loan to start a small business or purchase a home. At the same time, poor people must be protected by the law so that they can own, use and dispose of their property as they see fit.”*¹²²

A fundamental right protection under the Constitution of India is considered to be the best standard to be accorded to this right because the possibility of exploitation of terms like “public purpose” stands limited due to the operation of other provisions¹²³ The relegation of the right to a mere constitutional right has accentuated urban impoverishment, a function of the ills of over-urbanization due to

¹²¹ Editorial, *Mess in the slum capital*, THE HINDU (Jun. 11, 2012), available at <http://www.thehindu.com/opinion/editorial/mess-in-the-slum-capital/article3512523.ece>

¹²² *Property Rights and Tenure Security*, UNITED NATIONS DEVELOPMENT PROGRAMME, available at www.undp.org/.../legal.../property_rights_tenuresecurity.html (last visited Nov. 11, 2013).

¹²³ CONST., *supra* note 33, art. 14, 19 & 21 (They ensure protection from non-arbitrariness and non-reasonableness).

improper policy decisions, intensified due to the lack of property rights given to the impoverished. The urban poor face the problem of forced eviction by the Government, and unfortunately even the Indian judiciary has not been receptive to the need to recognize the people's right to adequate housing. Tenure security, which is a gradual progression from *de facto* recognition to *de jure* recognition, is necessary so that the residents of the squalid tenements have the means to invest and capitalize on their housing, and thus raise further funds towards other economic enterprises. It is necessary to realize that every individual has a right to the city, which can be characterized as the right to have formally recognized property rights and the right to participate effectively in the planning behind development of cities. Finally, an evaluation of the Model Property Rights to Slum Dwellers Bill, 2011, gave us an idea of how the Government of India has woken up to the pressing need of ensuring property rights to the impoverished masses of the cities, but it also shows how there are certain drawbacks which need immediate scrutiny, such that the Bill serves its purpose to the fullest extent.