

## SLUM CLEARANCE TO PROPERTY TITLING A LEGISLATIVE FRAMEWORK FOR SLUM-FREE CITIES?

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*The post-2005 period has seen in India broad-based discussions on the alternative approaches to addressing issues of slums and affordable housing. Discussions have involved a cross-section of experts including members of the bar, representatives of the government at various levels, the private sector, and civil society. Several major policy announcements have been made by the government on this subject. In November 2011, the Ministry of Housing and Urban Poverty Alleviation, Government of India put out for discussion a draft model Property Rights to Slum Dwellers Act. This short paper attempts to capture the relevant propositions advanced in the proposed Act, and examines if the proposed legislative framework would contribute to what the concept of “slum-free cities” stands for.*

### 1. *Slum clearance to Property Rights: What does it entail?*

The proposed draft model Property Rights to Slum Dwellers Act, 2011 is the first federal government initiative, since the enactment of the Slum Areas (Improvement and Clearance) Act, 1956, that deals with slums in a legislative framework<sup>1</sup>. Moving from Slum Areas (Improvement and Clearance) Act, 1956 to the proposed draft model Property Rights to Slum dwellers Act, 2011 represents a major paradigm shift in India’s approach to and thinking on “slums” and “urban poverty”. It also represents a major step towards providing a *de jure* cover to tenurial security and universalization of services, the two main ingredients of slum upgradation strategy under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM).

The coming in of this draft model Act raises a number of questions: what does this proposal Act entail? Is this Act designed to replace the Slum Areas (Improvement and Clearance) Act of 1956? Will the proposed Property Rights Act deliver slum-free cities? Does the proposed draft Act take into account the range of discussions that have been held in recent years to address the issue of slums?

Perusal of the draft model Property Rights Act shows that it aims at –

- i. Facilitating inclusive growth and slum free cities;

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<sup>1</sup> Several state governments have over the 1956-2011 period enacted legislations on the different facets of “slums” – e.g., establishment of Slum Redevelopment Authority, Patta Act, and the amended versions of the 1956 Act.

- ii. Providing security of tenure, basic amenities, and affordable housing to slum dwellers;
- iii. Assigning a “legal document of entitlement” to slum dwellers entitled to some dwelling space; it will be preceded by a document of **intent** to allot dwelling space to slum dwellers;
- iv. Providing mortgageable rights to allottees of dwelling space with the purpose of raising finance, with the qualification that tradability of such a space will be limited to the government or the slum collectives, and
- v. Providing compensation for acquisition of land, wherever necessary, in the form of concessional building rights in lieu of land foregone or monetary compensation.

The proposed draft Act has three distinct features: (i) assigning a legal document of entitlement preceded by a document of intent, **presumably to forestall possible evictions**; (ii) **limited** mortgageability of dwelling space, and (iii) compensation in the form of building rights in lieu of land foregone. Most public policy analysts contend that these provisions are important and should help in the launch of the Rajiv Awas Yojna that represents *a vision of a Slum Free India*.

#### **Rajiv Awas Yojna**

Rajiv Awas Yojana envisages a “Slum-Free India” with inclusive and equitable cities in which every citizen has access to basic civic and social services and decent shelter. It aims to achieve this vision by encouraging States/Union Territories to tackle the problem of slums in a definitive manner, by a multi-pronged approach focusing on:

- Bringing all existing slums, notified or non-notified within the formal system and enabling them to avail of the same level of basic amenities as the rest of the town;
- Redressing the failures of the formal system that lie behind the creation of slums; and
- Tackling the shortages of urban land and housing that keep shelter out of reach of the urban poor and force them to resort to extra-legal solutions in a bid to retain their sources of livelihood and employment.

## **2. *Slum-Free Cities: Legislative Imperatives***

The concept of slum-free cities stems from a very broad-based appreciation and some fragmentary evidence that slum improvement and upgradation is a necessary condition for slum-free cities. It signals, as stated above, a shift from the earlier position where slums were seen as a problem or as India’s First Five Year Plan (1951-56) noted, “a disgrace to the country”; the First Plan took the position that “from a national point of view it was better to

pay for the cost of clearing slums than to continue to pay the mounting cost of slums and suffer their destructive effects upon human lives and property indefinitely”. The contemporary position rests, at least in part, on the philosophy enunciated in the 1970s, that public housing could not be expected to solve the problem of slums and it was necessary to focus on amelioration of their living conditions and creation of safety nets for them in the form of procurement and distribution of public goods and employment.

Recent debate on this proposition has, however, held that while slum improvement and upgrading may be a key viable route to urban poverty reduction, it is, at most, one component of the strategy and needs to be complemented by actions comprising:-

- i. Bringing in additional lands for urban usage on a *continual basis*
- ii. Revising upwards the floor space index
- iii. Providing tenurial security
- iv. Extending basic services to slum settlements
- v. Involving communities in the process of upgradation, and
- vi. Integrating slum improvement strategies (RAY) with the JNNURM.

These give rise to the need for several legislative imperatives that include, at the very least, simplification of the process of converting rural lands for urban usage, overhauling of the cumbersome land acquisition procedures; modifications in the building bye-laws and zoning laws and a transparent land record system. The ground-level realities affirm that many, if not most, laws and regulations designed to serve the interests of the poor have acted against their interests and created barriers that have proved difficult to dismantle. Most land transactions in India take place under non-market conditions that hurt the urban poor.

### **3. *Alternative Approaches to Slum-Free Cities: The 12<sup>th</sup> Five Year Plan***

The preparation of the 12<sup>th</sup> Five Year Plan (2012-17) has triggered a fresh debate on India’s approach to “slums” and “urban poverty”<sup>2</sup>, led essentially by the proposition, advanced by some scholars, that slum-improvement and upgrading may be growth-enhancing, and a lever of growth with large productivity impact<sup>3</sup>. Irrespective of the empirical validity of this proposition, at least four approaches have been proposed and evaluated for their potential impact on the objective of slum-free cities. These are:

- Rights approach to addressing issues of slums and urban poverty alleviation – i.e., right to shelter, right to services, and right to employment;

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<sup>2</sup> One of the principal issues that came up for discussion was the possible impact of the consistently high GDP growth registered during 2004-2009 on the numbers of the urban poor and numbers of the slum households. The 2009-10 NSSO results were not in public domain at that time (which show that the period 2004-05 to 2009-10 has brought about a decline both in the numbers of the urban poor and the headcount ratio).

<sup>3</sup> A pilot study conducted of two slums, one improved and upgraded with basic services and another without any improvement shows that (i) the income of slum households in an improved slum is 1.4% higher than that of households in an unimproved slum; (ii) there is greater stability in the employment status of workers in improved slums, and (iii) those in a improved slum have taken larger loans for purposes that are undefined compared to households in unimproved slums.

- Universalization of services as a strategy to reach out to the poor;
- Intensification of pro-poor focus in urban programmes, using the instrument of earmarking; and
- Formalization of the “informal settlements”

With respect to the formalization of informal settlements (including informal employment), the field-level assessment shows that it is the existing legal framework that is adverse to the interest of the poor; that the existing laws that deal with the planning of cities and towns assume that cities are formal spatial entities while, in fact, 20-80 percent of cities are informal, and legislative frameworks do not recognize informality. What are the processes and changes that need to be brought in the existing legislative frameworks, given that the existing frameworks do not recognize “informality”?

#### ***4. Will the Proposed Legislative Framework Deliver Slum-Free Cities: The Connects and Disconnects***

The proposed legislative framework constitutes a major step towards formal recognition of slums, implicitly their contributions to the national socio-economic system. It signals a formal shift in India’s policy towards slums. It recognizes the economic importance of property rights, essentially in Hernando De Soto’s mould who observed that “what property rights do is to reduce uncertainty for people who want to invest their labour or capital in the development of existing resources. It is hard to think of anything that discourages investment as much as uncertainty. From a legal perspective, it is evident that if it takes enormous time to obtain land, people will invade land and acquire it informally. The current legal system is the best explanation of the existence of informality”<sup>4</sup>.

The principal issue is: will the proposed draft model Act deliver “slum-free cities”? Are the provisions, especially those that relate to property rights, mortgageability, and the compensation are robust enough to provide adequate incentives for renewal and redevelopment of slums. While it is still speculative (apart from the fact that the draft model is a proposed Act, and it is far from clear if it replaces the Slum Areas (Improvement and Clearance) Act of 1956), it is important to underline the following three points:

- The proposed Act is at best, a partial response to the problem of slums. It misses out on slum prevention strategy as a complement to property rights to slum dwellers<sup>5</sup>;

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<sup>4</sup> Hernando De Soto. 1989. *The Other Path. The Invisible Revolution in the Third World*. I.B. Tauris & Co. Ltd. London.

<sup>5</sup> The Rajiv Awas Yojna inter-alia aims at (i) tackling the shortages of urban land and housing that keep shelter out of reach of the urban poor and force them to resort to extra-legal solutions, and (ii) redressing the failures of the formal system that lie behind the creation of slums.

- The proposed rights of slum dwellers under the draft model Act are “inferior”. Moreover, global experience suggests that formalization of property rights does not necessarily lead to access to credit. In Peru which has the world’s largest programme of property titling the evidence is that “after four years of operation with 76 percent of titles issued, only 1.6 percent of title holders had obtained loans through the banking system using their property titles as collateral<sup>6</sup>.”
- Creating a separate Act to granting property rights to slums dwellers rather than amending the existing Acts, which as stated earlier, do not recognize informality and are adverse to the interests of the poor, would make it difficult to integrate slum dwellers and settlements into the city economy and city’s fiscal system. Prima facie, bringing in the Property Rights Act is an easy route; a bigger challenge is to make appropriate amendments to the existing legislations that deal with city’s growth and development.

## 5. *Concluding Remarks*

India faces a formidable challenge of making cities slum-free. The 2001 Census had placed the slum population at 42.6 million in 640 Indian cities and towns stating that slums were a phenomenon of large cities and towns. A recently constituted Committee on Slum Statistics has put the numbers of slum dwellers at 93 million for 2011; this number is projected to increase to 104.7 million by 2017, the terminal year of the 12<sup>th</sup> Five Year Plan.

Although India has over six decades of experience with ad-hoc strategies for slum improvement and urban poverty alleviation, ranging from clearance and rehabilitation of slums, environment improvement of slums, support for in-situ upgradation, direct investment in settlement upgrading, livelihood programmes, and assignment of tenurial security of some sort, these have had little impact on the conditions in slum settlements, and in many instances, fueled growth of informal settlements.

Many public policy analysts contend that public policies have generally failed to address the fundamental determinants of informality, these being dysfunctional urban land markets, and high transaction costs imposed by inefficient bureaucratic procedures. The magnitude and persistence of informality stems from the continuation of obsolete land policies and laws, rather than the absence of law. Critical issues are recognized in the public policy agenda; the legislative framework lags behind policies.

Addressing the problems of slums and urban poverty is an integral part of the way in which the entire process of urbanization is viewed and understood and the way in which it is managed and governed. Urbanization can be exclusionary as it has often been – no formal place for the poor in cities and towns being the obvious evidence, or it can be made inclusive by jettisoning the archaic ways in which cities are planned and governed. The size, depth and nature of urban poverty are directly affected by these considerations as these are by other macro-economic and global events.

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<sup>6</sup> See Martin O. Smolka and Andriana de A. Larangeira. “Informality and Poverty in Latin American Urban Policies”, in George Martine et. el. *The New Global Frontier: Urbanization, Poverty and Environment in the 21<sup>st</sup> Century*. Earthscan. London.