



**LAW COMMISSION**  
**OF**  
**INDIA**

**ONE HUNDRED THIRTY-EIGHTH  
REPORT**

**ON**

**LEGISLATIVE PROTECTION FOR  
SLUM AND PAVEMENT DWELLERS**

**1990**



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भारत सरकार  
GOVERNMENT OF INDIA  
शास्त्री भवन  
SHASTRI BHAWAN,  
नई दिल्ली  
NEW DELHI  
December 20, 1990.

D.O. No. 6(3)(12)/90-LC(LS)

To

Dr. Subramaniam Swamy,  
Minister of Law and Justice,  
Government of India,  
Shastri Bhavan,  
New Delhi.

Dear Minister,

Re : *Presentation of 138th Report.*

Since the terms of reference of the Law Commission commence with the first term encaptioned "Law and Poverty" and enjoin the Commission "to take all such measures as may be necessary to harness law and the legal process in the service of the poor", the Commission has *suo motu* examined the problem pertaining to the plight of the slum and pavement dwellers facing eviction at the hands of the local authorities.

The magnitude of the problem can be gauged from the fact that nearly 3.5 crores of citizens of India live in slums and on pavements of metropolitan cities. That is to say, one citizen out of every twenty five citizens is so afflicted. The slum dwellers are often denied electricity and sanitary facilities on the ground that their occupation is unauthorized. And quite often their huts are razed to the ground and they are evicted by the local authorities without offering them any alternative facility. The plight of these unfortunate evictees comprising women and children is indescribable. Some legislative protection needs to be provided to them to ensure that they are not evicted regardless of humane considerations without offering them an alternative facility unless it is virtually impossible to do so.

To recommend introduction of this humane concept in Indian jurisprudence has been the endeavour of the Commission in the 138th Report of the Commission captioned "LEGISLATIVE PROTECTION FOR SLUM AND PAVEMENT DWELLERS", being presented hereby.

With kind regards,

Yours faithfully,

(M.P. THAKKAR)

Encl : 138th Report

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## CHAPTER I

### INTRODUCTION

1.1. *Harnessing the law for the poor—a suo motu exercise*—Can the conscientious members of the community sleep in peace when millions of their brethren and sisters are denied the comfort of sleeping on the footpaths of the metropolises of India and that of living in conditions unfit even for mute animals in slums in the neighbourhood? The Law Commission having been entrusted under item 1(b) of its Terms of Reference “To take all such measures as may be necessary to harness law and the legal process in the service of the poor” deems it to be its duty to address itself to this problem by undertaking the present exercise *suo motu*.

1.2. *Scope and target*—This report, therefore, deals with a problem which has been prevalent for a long time in India, a problem which, at some stage or other, must be seriously tackled by the society, a problem which is not one for mere academic discussion but is seriously connected with basic needs of human beings. The problem is that of persons who are destined to spend their lives on pavements or slums in the cities. Should such persons be evicted from the places where they dwell, merely because, in the eye of the law, their occupation of the premises is unauthorised? If the society permits such eviction, should it not provide a reasonably adequate alternative accommodation to them so that the right to live, guaranteed by the Constitution, carries some meaning for them? This question has come up before the courts in India more than once. Generally, while *ad hoc* relief has been given to these dwellers, it has not been possible so far to go into the heart of the matter. The Commission believes that the society must address itself directly to the questions posed above and consider the question of incorporating, in the statutory framework of India, a just and workable solution within the limits of the Constitution. An endeavour has, therefore, been made herein to examine the legal contours of the problem, to draw attention to the existing provisions on the subject, to suggest a solution to the extent to which legislation on the subject is within the competence of Parliament, and to make appropriate recommendations to relieve the distress of the suffering compatriots within the practical parameters of law.

1.3. *Action by the local authorities*—Pavements and slums exist in big cities. Eviction of dwellers in these premises is normally ordered by local authorities, whether they are known by the name of Municipal Corporation, Municipal Committee, Municipal Council, Cantonment or by any other name. In this report, we propose to confine ourselves to the eviction of such persons by the local authorities. So far as eviction by the State Government is concerned, generally it takes place under the Public Premises (Eviction of Unauthorised Occupants) Act, either as enacted by the Centre or as enacted (by whatever name) by the State. Eviction ordered under such a law mostly relates to individual premises over which a private person is alleged to have established unauthorised or illegal occupation and it does not raise questions of social justice of the dimensions that are met with where the actions of eviction is taken by the local authorities.

## CHAPTER II

### PROFILE OF SLUMS AND SLUM DWELLERS IN INDIA

2.1. *Growth of slums in India.*—There has been a rapid growth of population in our metropolitan cities, which has resulted in continuously rising density of population in all these cities. According to one study <sup>2/1</sup> the growth of slum population is almost double the growth of urban population in the southern region. It was estimated some years ago to be around 7.25 million, which represents 16.4 per cent of the total urban population. In the above study, <sup>2/2</sup> a table gives the figures of slum population in the southern region according to the population size of towns as under :—

TABLE  
*Slum population in southern region*

Population size of U.A./Cities/Towns	Total population number in 000	Slum population number in 000	Percentage of Col (5) to Col (3)
(1)	(3)	(5)	(7)
10 lakhs and above . . . . .	9,719	2,150	22.12
5—10 lakhs . . . . .	6,361	1,352	21.25
3—5 lakhs . . . . .	2,109	392	18.59
1—3 lakhs . . . . .	7,470	1,270	17.00
50,000—1 lakh . . . . .	5,707	701	12.28
Below 50,000 . . . . .	12,838	1,388	10.81
All sizes . . . . .	44,204	7,253	16.41

(Columns 2, 4 and 6 of the Table are not reproduced here, as not material).

2.2. *Position as per 1981 study*—A more detailed study <sup>2/3</sup> on the subject has summarised the position as under :—

“According to the 1981 Census estimates, India had a slum population of about 30 million, amounting to nearly one-fifth of the total urban population of the country. *The slum population of India is larger than the total population of a large number of countries including Canada (24.2 million), the Netherlands (14.2 million), Australia (14.9 million), Belgium (9.9 million), Sri Lanka (15.0 million), Afghanistan (16.3 million), Malaysia (14.2 million), Portugal (9.8 million), etc.*”

These comparative figures would give some indication of the magnitude of the problem of slums.

2.3. *Slums*—The term “slum” is usually understood as “court, alley or street of dirty crowded houses”. <sup>2/4</sup> The Report of the Socio Economic Survey of Slums of Old Delhi states that “The term ‘slum’ should be applied to those parts of the city which may be unfit for human habitation, either because the structures therein are old, dilapidated, grossly congested and out of repairs or because it is impossible to preserve sanitation for want of sanitary facilities, including ventilation, drainage, water supply, etc., or because the sites by themselves are unhealthy” <sup>2/5</sup>. Thus, according to this test, the main criteria are—

- (i) Old state of the structure, or
- (ii) insanitariness, or
- (iii) unhealthy sites.

Each of these criteria is substantially concerned with the quality of life.

2.4. *Position in Bombay*—It appears that around 40 per cent of Bombay’s population has sought its own shelter in an unconventional manner <sup>2/6</sup> “There are the people who are considered to be illegal occupiers of land and shelter—the squatters”,

Bombay started slum clearance and improvement as early as 1958. The Slum Areas Improvement etc. Act was enacted in Maharashtra in 1971, followed by the Maharashtra Slums Improvement Board Act, 1973. The Act of 1973 envisages slums as a cause of danger to health, safety and convenience of the slum dwellers themselves and also of the surrounding areas, and states that until such time as the slums are removed and the people re-housed, it is necessary to provide basic necessities, such as water, sanitary arrangements, and electricity to them. But, in practice, the fact is accepted today (in Bombay) that slums will continue to grow and, owing to resistance put forward by slum dwellers and the political support, clearance is not possible. Hence the emphasis has been upon improvement.

2.5. *Amenities provided in Bombay*—This is not the place to go into details of the various programmes in Bombay. But it will be of interest to refer to the standards of amenities adopted in that city <sup>2/7</sup>.

*Standard of amenities*

Sl. No.	Facility	Standards	Per capita expenditure
1	Latrine	1 set for 20—25 people . . . . .	100
2	Water tap	1 Faucet for 150 people . . . . .	9
3	Street light	Depending on site conditoinis . . . . .	4
4	Pathways	Do.	22
5	Drainage	(Only within the slums) . . . . .	15
			150

2.6. *The Madras example*—As regards Madras, we have a helpful description of slum clearance improvement in that city in one of the studies, <sup>2/8</sup> which illustrates the trend towards slum improvement. The magnitude of the slum problem in Madras can be seen from the fact, that while slums cover six per cent of the total area in the city, they contain more than 30 per cent of the population. As of 1980, more than a million people in this city lived in 1500 squatter settlements. To improve this situation, the Tamil Nadu Slum Clearance Board was formed in 1971 and slum clearance was followed by slum improvement programme which has been in progress from 1972.

2.7. *Figures regarding slums in India*—In a recent study, <sup>2/9</sup> the position as per 1981 Census in India regarding slum has been thusstated :

“According to the 1981 Census, India had a slum population of 298.89 lakhs accounting for 18.75 per cent of the urban population. Of these 129.54 lakhs were in the twelve million cities. In other words, the 12 metropolitan cities which held about 26 per cent of the total urban population accommodated over 43 per cent of the slum population.

The larger cities have a higher proportion of slum population to total population. Slum population accounts for more than 30 per cent of the total population of the metropolitan cities. In cities with population of 5 lakhs to 10 lakhs, over 20 per cent of the population dwells in slums. In towns with less than 50,000 people, slum population is about 10 per cent.

Among the metropolitan cities, Calcutta had the largest slum population in 1981 (32.5 lakhs) followed by Bombay (31.57 lakhs) and Delhi (17.30 lakhs).

In 1981, Kanpur had the highest percentage of slum population (40.34) followed by Lucknow (38.83), Greater Bombay (38.30) and Calcutta (35.5)....”

2.8. At this stage we would like to quote from N.C.U. Report. <sup>2/10</sup>—

“5.7. *Manifestations of Urban Poverty*

“5.7.1. Urban poverty manifests itself in many forms. The most visible of these are :

Proliferation of slums and bustees. Fast growth of an informal sector increasing casualisation and under-development of labour.

Crushing pressure on civic services. High rate of educational deprivation and health contingencies.

Retarded growth of physical and mental capacities. A growing sense of hopelessness among the urban poor, resulting in rising crime rates and group violence.

#### *Growth of Slums and Bustees*

"5.7.2. The poor cannot afford to pay the growing market prices of pucca shelter or buy land at the fabulous prices charged near their work-places. They cannot afford the cost of transporting themselves or their stock in trade over long distances. They, therefore, settle on marginal lands near their work-places, which are otherwise considered unfit for habitation by the non-poor classes. Examples are river banks, margins of nullas and drainage canals, marginal railways lands and swamps. Their constructions are of cheap scrap and salvaged material like gunny bags, tarpaulin, scrap tin sheets, wooden planks etc. The habitat is irregular as it is unplanned. Civic amenities if available, are minimal. As a result, public sanitation and personal hygiene break down.

"5.7.3. The growth of slums, is, therefore, a symptom of the inability of people to procure land and shelter through market transactions, in which they find themselves out-priced since government has failed to regulate urban land resources in such a way that poor can have equitable access to them. Estimates of slum population vary, but its growth is dramatically highlighted by some examples. In Calcutta roughly 35 per cent. of the city's population lives in identified slums, but it is estimated that the population of all slums, and squatter settlements is much higher. According to a handbook of the National Buildings Organisation (1982-83), 67 per cent. of the households in Calcutta lived in one-room units. In Madras about 38 per cent. of the population lived in declared slums in 1971 and 54 per cent. of the households lived in one-room dwellings. In Hyderabad, the slum population jumped from one lakh in 1962 to a staggering 5 lakh by 1981. In Delhi, squatters household are estimated to have grown from 12.741 in 1951 to 1.13 lakhs by 1975-76.

#### *Increasing Casualisation and Under-employment of Labour*

"5.8.3. There is also increasing casualisation of labour and persistence of under-employment in Urban areas, according to Sarvekshana, in April 1986, the percentage of casual labour increased from 13.2 per cent to 14.75 per cent. in the case of males and from 25.59 to 27.27 per cent. in the case of females during the 1977-83 period. The percentage of unemployed, as measured by current-day status during the same period, increased from 5.35 to 5.45 per cent. for males, although it decreased from 2.11 to 1.72 per cent for females. Child labour accounts for nearly fifteen lakh workers in urban areas and continues to constitute about 8 per cent of employed males and about 7 per cent of employed females. Unemployment amongst the educated, especially graduates, is very high in the age of group 15-29 years. In Madras, it was found to be 20 per cent of males and 15 per cent. of females (Sarvekshana, October, 1986).

#### *"5.9. Crushing Pressure on Civic Amenities*

"5.9.1. The civic authorities are finding themselves increasingly incapable of providing civic amenities to the large influx of population within their boundaries. The population being poor, is unable to meet the cost of expanding such services which have to be supported from State grants or taxation of a narrow base of tax-payers. The per capita water consumption was reported to be between 16-23 litres per day in slum areas in Bangalore, the number of persons per tap varying between 40 to 428 in same city. According to the report of the task force of the Planning Commission on Financing of Urban Development, 31.2 per cent. of the urban population was not covered by sanitation services. According to a DDA study of 28,100 squatter households (1986), a hut of 2.5×3 metres accommodated about 4 persons. About 50 per cent of dwellers were using open areas for defecation. Dirty water generally accumulated and stagnated by the side of drains."

These extracts from the Report of the National Commission on Urbanisation indicate the magnitude of the problem.

2.9. *Latest profile of slum population*—A fairly recent study gives an all India profile. <sup>2/11</sup> According to that study the 1981 estimates identified the slum population as 32 to 40 million. Of this, the lion's share went to 12 metropolitan cities which together accounted for 32% of the slum population (13 to 16 million). A government study for the estimates of 1990 <sup>2/12</sup> is also quoted as under :

TABLE 2—*Estimates of slum population 1990*

Category	All Urban Population in Millions	Estimated Slum Population Range in Millions
1981		
India . . . . .	159.7	32—40
Metropolitan . . . . .	42.2	10—34
Other Urban . . . . .	117.5	18—24
1990		
India . . . . .	241	45—56
Metropolitan . . . . .	65	22—25
Other Urban . . . . .	179	23—31

2.10. *Slums in Kanpur*—A study regarding Kanpur happens to be available. <sup>2/13</sup> According to sources close to the Kanpur Development Authority, more than 5 lakh people still live in various types of slums in Kanpur city. Again, as per table 4 given in the study the types of slums are as under :—

Type of slums	Population (i.e. slum)	Percentage out of total slum population
Ahats . . . . .	259,552	51.59
Bustees (old slums) . . . . .	158,511	31.51
Abadis and villages . . . . .	40,580	8.07
New slums . . . . .	44,437	8.83

Above figures were for the year 1978, and it was also estimated that more than 83% of the slum dwellers in Kanpur were living either in Ahats or old slums or in inhuman living conditions. New slums were coming up on road-side and vacant spaces along the railway line.

2.11. The problem of slum dwellers is, therefore, one which ought to exercise the minds of the administrators and legislators of our Welfare State and of the community at large.



## CHAPTER III

### PROFILE OF PAVEMENT DWELLERS

3.1. An analysis of the situation obtaining in regard to pavement dwellers is contained in a very recent study.<sup>3/1</sup> The analysis is quoted in extenso here :—

“The pavement dwellers are the houseless families literally living on the roadsides or in busy streets in the city and suburbs. Their dwellings are found in the vicinity of the railway stations, in the areas of commercial activity, around docks, and the localities in which the local authorities have provided public baths, latrines and urinals. Several families which have chosen the Bombay footpaths just for survival have been living there for varying durations of time from one to over fifteen years. Some are born there. They erect temporary unauthorised structures, made up of plastic, polythene or cardboard sheets tied to a couple of bamboo sticks without any construction whatsoever. It is easy to put up structures, but easier to dismantle them especially when the occupants are apprehended by the enforcement authorities, but that rarely happens. Some families, perhaps the less enterprising ones, take shelter under rail or road bridges, flyovers, culverts or even in the huge cement pipes lying around in open space until the pipes are put to use.

They erect a place of residence, they hardly reside in it. They live around it. They have no cooking facilities, no place to take bath or wash clothes and utensils, no adequate place to relax, no water and latrine facilities, and not even a residential address. While they have abundant and free access to the open sky—a facility rarely provided for, a modern type flat constructions, they are also more exposed to the elements of nature by way of wind and air, sun and rain. Perhaps they are among the poorest of the poor in urban areas. Although no exact figures are available, the present figure of the houseless population is likely to be in the region of two to three lakhs.

The pavement dwellers are a mixed and myriad crowd, quite a few having landed there as a result of the pull factors—the attraction that the city of Bombay holds for people from other parts of the country. There is also a large section of migrants who have been pushed out of their native place by circumstances such as floods, drought, poverty and unemployment, but even in these cases, it is equally true to say that both push and pull factors operate though the degree may vary.

Most of these dwellers admit that their contact with the more fortunate neighbours in the nearby edifices is mostly casual, although some say they do odd jobs for them, like carrying a parcel or two for which they are paid on the spot. In a few cases, the women folk, dwelling on the pavements, are employed as domestic help by the nearby residents.

They do not resent their lot, nor do these affluent sections protest about the squatters with conviction enough to pose a serious threat to their way. The rich are content to dole out a few coins to the children along with a few choice invectives. The pavement dwellers in turn are content with the scraps and crumbs tossed to them by whim, fancy or fear. They are a peaceful lot otherwise, for they stand to lose their shelter on the pavement if they disturb the affluent or indulge in fights with their fellow dwellers.

Asked whether they were happy and contented with their existing way of life and were adjusted to it, the data oddly enough revealed that, by and large, these dwellers were rather satisfied with their lot, though there were some mixed reactions to be sure.

Pavement dwelling is a deep-rooted malady. Although there are several poverty groups, the pavement dwellers are the poorest of the poor. In

sum, the poor living in the chawls are the least poor. Those living in the slums are poorer than the chawl dwellers. The pavement dwellers are the poorest of the poor.

Further, the poor do not form a single and homogeneous group whether they live in chawl, slum or on pavement. Some of the poverty groups require very little help, others require massive effort on the part of the government and other public and private organisations to rehabilitate them. This is so because the poor include among others, the unemployed, the self-employed, the casual labour, the aged, the destitute, 'the beggar, the physically handicapped, the mentally sick and so on. Though lack of financial resources is common, each group has peculiar problems, handicaps and coping methods. To understand the special problems before planning any rehabilitation programmes a few illustrations are given as under :

A large number of the poor are able bodied persons. They do not want charity type of services or temporary relief. They look for avenues which help them to overcome poverty. They need jobs, want their basic needs to be satisfied and are concerned about their children's education and welfare. Investment in them is likely to be fruitful.

Several self-employed poor possess specialised skills. They are capable of producing certain consumer goods which have market. Some self-employed have acquired technique of selling goods and services. Such groups can overcome their poverty if they get some help. They need to be provided with adequate financial resources, facilities for producing better quality of goods and services, and guidance."

3.2. *Pavement dwellers in Bombay*—The following extracts from the Supreme Court judgment of 1986 may be of some interest in connection with the situation regarding pavement dwellers in Bombay <sup>3/2</sup>:—

The charge made by the State Government in its affidavit that slum and pavement dwellers exhibit especial criminal tendencies is unfounded. According to Dr. P. K. Muttagi, Head of the unit for urban studies of the Tata Institute of Social Sciences, Bombay, the surveys carried out in 1972, 1977, 1979 and 1981 show that many families which have chosen the Bombay footpaths just for survival, have been living there for several years and that 53 per cent of the pavement dwellers are self-employed as hawkers in vegetables, flowers, ice-cream, toys, balloons, buttons, needles and so on. Over 38 per cent are in the wage employed category as casual labourers, construction workers, domestic servants and luggage carriers. Only 1.7 per cent of the total number is generally unemployed. Dr. Muttagi found among the pavement dwellers a graduate of Marathwada University and a Muslim poet of some standing. "These people have merged with the landscape, become part of it, like the chameleon", though their contact with their more fortunate neighbours who live in adjoining highrise buildings is casual. The most important finding of Dr. Muttagi is that the pavement dwellers are a peaceful lot, "for, they stand to lose their shelter on the pavement if they disturb the affluent or indulge in fights with their fellow dwellers". The charge of the State Government, besides being contrary to these scientific findings, is born of prejudice against the poor and the destitute. Affluent people living in sky-scrapers also commit crimes varying from living on the gains of prostitution and defrauding the public treasury to smuggling. But, they get away. The pavement dwellers when caught defend themselves by asking "who does not commit crimes in this city."

In the same judgment the economic aspect regarding pavement dwellers has been thus dealt with <sup>3/3</sup> :—

One of the major causes of the persistent rural poverty of landless labourers, marginal farmers, shepherds, physically handicapped persons and others is the extremely narrow base of production available to the majority of the rural population. The average agriculture holding of a farmer is 0.4 hectares, which is hardly adequate to enable him to make both

ends meet. Landless labourers have no resource base at all and they constitute the hard core of poverty. Due to economic pressures and lack of employment opportunities, the rural population is forced to migrate to urban areas in search of employment. "The Economic Survey of Maharashtra" published by the State Government shows that the bulk of public investment was made in the cities of Bombay, Pune and Thane which created employment opportunities attracting the starving rural population to those cities. The slum census conducted by the Government of Maharashtra in 1976 shows that 79% of the slum-dwellers belonged to the low income group with a monthly income below Rs. 600. The study conducted by P. Ramachandran of the Tata Institute of Social Sciences shows that in 1972 91% of the pavement dwellers had a monthly income of less than Rs. 200. The cost of obtaining any kind of shelter in Bombay is beyond the means of a pavement dweller.

Some of the facts regarding hutments and pavements in Bombay has been stated in the Supreme Court judgment in these words<sup>3/4</sup> :—

In answer to the Municipal Commissioner's counter-affidavit, petitioner No. 12, Prafullachandra Bidwai who is a journalist, has filed a rejoinder asserting that Kamraj Nagar is not located on a foot-path or a pavement. According to him, Kamraj Nagar is a basti off the Highway, in which the huts are numbered, the record in relation to which is maintained by the Road Development Department and the Bombay Municipal Corporation. Contending that petitioners 1 to 5 have been residing in the said basti for over 20 years, he reiterates that the public has no right of way in or over the Kamraj Nagar. He also disputes that the huts on the foot-paths cause any obstruction to the pedestrians or to the vehicular traffic or that those huts are a source of nuisance or danger to public health and safety. His case in paragraph 21 of his reply affidavit seems to be that since the foot-paths are in the occupation of pavement dwellers for a long time, foot-paths have ceased to be foot-paths. He says that the pavement dwellers and the slum or basti dwellers, who number about 47.7 lakhs, constitute about 50 per cent of the total population of Greater Bombay, that they supply the major work force for Bombay from menial jobs to the most highly skilled jobs, that they have been living in the hutments for generations, that they have been making a significant contribution to the economic life of the city and that, therefore, it is unfair and unreasonable on the part of the State Government and the Municipal Corporation to destroy their homes and deport them: A home is a home wherever it is. The main theme of the reply-affidavit is that "The slum dwellers are the sine qua non of the city. They are entitled to a quid pro quo". It is conceded expressly that the petitioners do not claim any fundamental right to live, at least to exist.

Such is the plight of pavement dwellers in Bombay.

## CHAPTER IV

### PRESENT POSITION

4.1. *Scope of the Chapter*—In this Chapter, it is proposed to examine the present position in law as to the eviction of slum dwellers and pavement dwellers. The most important judgment on the subject is of 1986, which we shall examine presently.<sup>4/1</sup>

4.2. *The Supreme Court case from Bombay (1986)*—In the Supreme Court judgment which was pronounced <sup>4/2</sup> with reference to the Bombay Municipal Corporation Act, 1986 the writ petitions portrayed “the plight of lakhs of persons who live on pavement and slum dwellers in the city of Bombay” and who were described (in the judgment) as constituting nearly half the population of the city. There were two main groups of petitions. The first group related to the pavement dwellers, while the second group related to pavement and Basti or slum dwellers.

4.3. *Petitioner's contentions*—The petitioners had asked for a judgment to the effect that they could not be evicted from their Bastis and squalid shelters without being offered alternative accommodation. They relied for their rights under article 21 of the Constitution. They did not contend that they had a right to live on the pavement. Their contention was as under :—

- (i) They had a right to live (article 21 of the Constitution);
- (ii) This right could not be exercised without the means of livelihood;
- (iii) For exercising this right and for seeking the means of livelihood, they had no option but to flock to big cities like Bombay which provided the means of bare subsistence;
- (iv) They chose a pavement or a slum which was nearest to their place of work. “In a word, their plea is, that the right to life is illusory without a right to the protection of the means by which alone life can be lived.”;
- (v) The right of life can be taken away or abridged, only by a procedure established by law. This procedure has to be fair and reasonable, so as to satisfy the requirements of article 21 of the Constitution. The procedure prescribed by the Bombay Municipal Corporation Act or the Bombay Police Act was arbitrary.
- (vi) The petitioners also relied on the right to reside in any part of the country, being a right which is guaranteed by article 19(1)(e) of the Constitution.

4.4. *Contention of the parties*—The contention of the Bombay Municipal Corporation (one of the respondents) was that whatever be the compulsion, the petitioners had no fundamental right to squat on or to construct a dwelling on, a pavement, public road or any other place to which the public had a right of access. Certain other points were also canvassed, but they are not material for the present purposes.

4.5. *Judgment of the Supreme Court*—After examining the above contentions and the relevant constitutional provisions and after quoting certain sociological literature relevant to the points at issue, the judgement of the Supreme Court<sup>4/3</sup> laid down a number of propositions. The important propositions are summarised in the succeeding paragraphs.

4.6. *Article 19(1)(e)*—The Supreme Court held that the right conferred on citizens by article 19(1)(e) of the Constitution to reside and settle in any part of India could not be read so as to confer a licence to encroach and trespass upon public property. This contention of the petitioners, therefore, failed.

4.7. *Article 21 of the Constitution and the power of*—Certain aspects of the article 21 were considered. Section 3(w) and (x) of the Bombay Municipal Act define “street” and “public street” to include a highway, a footway or a passage on which the public has the right of passage or access. Under section 289(1) of the Act, all pavements and public streets vest in the Corporation and are under the control of the Commissioner. The court held that in so far as article 21 of the Constitution is concerned, no deprivation of life (either directly or indirectly) is involved in the eviction of the slum and pavement dwellers from public places. The court

observed that the Municipal Corporation is under an obligation, under section 314 of the Bombay Municipal Act, to remove obstructions on pavements, public streets and other public places. The Corporation did not even possess the power to permit any person to occupy a pavement or a public place on a permanent or quasi-permanent basis. The petitioners had not only violated the provisions of the Bombay Municipal Corporation Act, but they had also contravened sections 111 and 115 of the Bombay Police Act. These sections prevent a person from obstructing any other person in the latter's use of a street or public place or from committing a nuisance. Section 117 of the Police Act prescribes punishment for the violation of these sections.

4.8. *Removal of obstructions and natural justice*—The judgment then dealt with section 314 of the Bombay Municipal Corporation Act 1888, which authorises the Commissioner to remove, *without notice*, certain obstructions. The court took the view that the procedure should be reasonable and this implied the requirement of notice. Examining the implications of this section, the court expressed itself as under regarding the pavement dwellers :—<sup>4/4</sup>

“But, though we do not see any justification for asking the Commissioner to hear the petitioners, we propose to pass an order which, we believe, he would or should have passed, had he granted a hearing to them and heard what we did. We are of the opinion that the petitioners should not be evicted from the pavements, footpaths or accessory roads until one month after the conclusion of the current monsoon season, that is to say, until October 31, 1975. In the meanwhile, as explained later, (a) steps may be taken to offer alternative pitches to the pavement dwellers who were or who happened to be censused in 1976. The offer of alternative pitches to such pavement dwellers should be made good in the spirit in which it was made, though we do not propose to *make it a condition precedent to the removal of the encroachments committed by them.*”

(a) See paragraph 4.11 infra.

4.9. *Kamaraja Basti Pavement dwellers*—As regards the “Kamraja Basti”, the above direction was not to apply, because the affidavit of the Municipal Commissioner showed that these hutments, (400 in all), were never regularised and were serious traffic hazards.

4.10. *Slum dwellers*—The court then addressed itself to slum dwellers (para 53 of the judgment) and took notice of the following factual situation :—

“The affidavit of Shri Arvind V. Gokak, Administrator of the Maharashtra Housing and Areas Development Authority, Bombay, shows that the State Government had taken a decision to compile a list of slums which were required to be removed in public interest and to allocate, after a spot inspection, 500 acres of vacant land in or near the Bombay Suburban District for resettlement of hutment dwellers removed from the slums. A census was accordingly carried out on January 4, 1976 to enumerate the slum dwellers spread over about 850 colonies all over Bombay. About 67% of the hutment dwellers produced photographs of the heads of their families, on the basis of which the hutments were numbered and their occupants were given identity cards. Shri Gokak further says in his affidavit that the Government had also decided that the slums which were in existence for a long time and which were improved and developed, would not normally be demolished unless the land was required for a public purpose. In the event that the land was so required, the policy of the State Government was to provide alternate accommodation to the slum dwellers who were censused and possessed identity cards. The Circular of the State Government dated February 4, 1976 (No. SIS 176/D-41) bears out this position. In the enumeration of the hutment dwellers, some persons occupying pavements also happened to be given census cards. The Government decided to allot pitches to such persons at a place near Malavani. These assurances held forth by the Government must be made good. In other words despite the finding recorded by us that the provision contained in section 314 of the Bombay Municipal Corporation Act is valid, pavement dwellers to whom census cards were given in 1976 must be given alternate pitches at Malavani though not as a condition precedent to the removal of encroachments committed by them. Secondly, slum dwellers who were censused and were given

identity cards must be provided with alternate accommodation before they are evicted. There is a controversy between the petitioners and the State Government as to the extent of vacant land which is available for resettlement of the inhabitants of pavements and slums. Whatever that may be, the highest priority must be accorded by the State Government to the resettlement of these unfortunate persons by allotting to them such land as the Government finds to be conveniently available. The Maharashtra Employment Guarantee Act, 1977, the Employment Guarantee Scheme, the New Twenty Point Socio-economic Programme, 1982, the Affordable Low Income Shelter Programme in Bombay Metropolitan Region and the programme of house building for the economically weaker sections must not remain a dead letter as such schemes and programmes often do. Not only that, but more and more such programmes must be initiated if the theory of equal protection of laws has to take its rightful place in the struggle for equality. In these matters, the demand is not so much for less Government interference as for positive government action to provide equal treatment to neglected segments of society. The profound rhetoric of socialism must be translated into practice for the problems which confront the State are problems of human destiny."

4.11. *Final order in the Bombay case*—The final order of the court in the Bombay case was as under :—

"To summarise, we hold that no person has the right to encroach, by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or earmarked for a public purpose like, for example, a garden or a playground; that the provision contained in section 314 of the Bombay Municipal Corporation Act is not unreasonable in the circumstances of the case; and that the Kamraj Nagar Basti is situated on an accessory road leading to the Western Express Highway. We have referred to the assurances given by the State Government in its pleadings here which, we repeat, must be made good. Stated briefly, pavement dwellers who were censused or who happened to be censused in 1976 should be given, *though not as a condition precedent to their removal*, alternate pitches at Malvani or at such other convenient place as the Government considers reasonable but not farther away in terms of distance; slum dwellers who were given identity cards and whose dwellings were numbered in the 1976 census must be given alternative sites for their resettlement; slums which have been in existence for a long time, say for twenty years or more, and which have been improved and developed will not be removed unless the land on which they stand or the appurtenant land is required for a public purpose, in which case, *alternate sites or accommodation* will be provided to them, the Low Income Scheme Shelter Programme which is proposed to be undertaken with the aid of the World Bank will be pursued earnestly; and, the slum upgradation programme (SUP) under which basic amenities are to be given to slum dwellers will be implemented without delay. In order to minimise the hardship involved in any eviction, we direct that the slums, wherever situated, will not be removed until one month after the end of the current monsoon season, that is, until October 31, 1985 and, thereafter only in accordance with this judgment. If any slum is required to be removed before that date, parties may apply to this Court. Pavement dwellers, whether censused or uncensused, will not be removed until the same date *viz.* October, 31, 1985."

4.12. *The question of alternative accommodation*—It will be seen that in the above judgment, while the aspect of alternative accommodation has been dealt with, the order requiring allotment of alternative accommodation seems to have been based on certain assurances given by the State Government. The court did not regard it as mandatory in every case. This is fairly clear from the fact that the court made an elaborate note of the assurance recorded in the affidavit of Shri Arvind Gokak. The judgment thus remains inconclusive on this aspect. It is this aspect which we propose to take up in a subsequent Chapter 4/5.

4.13. *Tamil Nadu Slum Act*. The Tamil Nadu Areas (Improvement and Clearance) Act, 1971 (11 of 1971), section 11, came up for construction in another case, a before the Supreme Court. 4/6 This Act has to be read with the Madras City

Municipal Corporation Act, 1919, sections 220 and 222, and the Tamil Nadu Land Encroachment Act 1905, section 2. In the writ petition before the Supreme Court in the Tamil Nadu case, the petitioners had asked for a *mandamus* restraining the respondents (the State of Tamil Nadu) from evicting the slum dwellers and pavement dwellers in the city of Madras, without providing alternative accommodation to them. There was also prayer for a writ to direct the provision of basic amenities like water, drainage and electricity to slum dwellers. It was alleged that the State Government was pressing to evict the dwellers of about 450 huts situated on the Canal Bank Road near the Loyola College. As the Supreme Court was satisfied that the Government had adopted a liberal policy towards the slum dwellers, no writ was issued. However, a direction was given not to evict the slum dwellers before 31st December, 1985. Decision in the *Bombay Pavement Dwellers case* 4/7 was declared as governing these writ petitions also.

The relevant statutory provisions in the Madras case as summarised in the judgment of the Supreme Court were as under :—

The Tamil Nadu Land Encroachment Act, 1905 provides by section 2 that all public roads, streets, lanes, paths, etc., are the property of the State Government. The Madras City Municipal (Corporation) Act, 1919 contains provisions in sections 220, 222 regarding encroachments on public streets. The Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 was passed in order to make provision for the improvement and clearance of slums in the State. Section 3 of the Act contains provisions for the declaration of an area as a slum area if, *inter alia*, such area is or may be a source of danger to the health or safety of the public by reason of the area being low-lying, insanitary, squalid or over-crowded. Section 5 of that Act empowers the prescribed authority to direct that no person shall erect any building in a slum area without its previous permission in writing. Chapter IV of the Act contains various provisions for improvement of slum areas. Section 11(a) provides that if the Government is satisfied that the most satisfactory method of dealing with the conditions in a slum area is the clearance of such area and demolition of all the buildings therein, it may by a notification declare the area to be a slum, clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of the Act. The proviso to that section, which is important, requires that before issuing such notification, the Government shall call upon the owners of lands and buildings in such slum area, to show cause why such a declaration should not be made and that, after considering the cause, if any, is shown by such owners, the Government may pass such orders as it may deem fit. Section 29 of the Act provides that notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the prescribed authority, institute any suit or proceeding for obtaining a decree or order of eviction of an occupant of any building or land in a slum area, or execute such decree or order if it is already obtained.

4.14. *Right to shelter*—Recently the Supreme Court, while dealing with the Urban Land (Ceiling and Regulation) Act 1976, sections 20 and 21, had occasion to deal with the human need for shelter. 4/8

The observations of the Supreme Court in paragraphs 9 and 10 are as under :—

“9. Basic needs of man have traditionally been accepted to be three — food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect—physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.

“10. With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that

people in search of work move to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to cities. Industrialisation is equally responsible for concentration of population around industries. These are features which are mainly responsible for increase in the homeless urban population. Millions of people today live on the pavements of different cities of India and a greater number live animal-like existence in jhuggis."

4.15. *Other judgments*—There are a few other judgements of the Supreme Court <sup>4/9</sup>, <sup>4/10</sup> relating to eviction, but they are not material for the present purpose.

4.16. *Gujarat case Interim Order*—In a Gujarat case interim mandatory injunction was granted by lower court against hutment dwellers for eviction from public roads. Interim order was passed by the trial court directing the eviction of hutment dwellers. It was held to be not justified. The plaintiff had no prima facie case whatsoever, so as to override the rights and interests of numerous citizens. No doubt, the hutment dwellers were occupying the public roads in contravention of some statutory provisions. But, according to the High Court, to evict them, would endanger their very "right to exist" and would encroach upon their fundamental right to life. On the one side, there was a question of life and death of the hutment dwellers and, on other side, there was the question of uneconomic user of the plot by the plaintiff. The Court was duty bound to protect the lives of the vast majority of the poor people, as against the profits and comforts of a few individuals. Thus, the balance of convenience was held to be not in favour of the plaintiff and an interim mandatory order directing the authorities to remove encroachments from public roads could not be passed. <sup>4/11</sup>.

4.17. *A recent Gujarat case of 1989*—It may be mentioned that in a recent Gujarat case, which involved the Municipal Corporation of Bhavnagar, one of the questions considered was as to the action that can be taken by a Municipal Corporation against alleged trespassers on public streets. <sup>4/12</sup> In that case, it was contended that the land in question was a public street and the petitioners had no right to use the same and they could be removed by the Municipal Corporation. Examining this contention, the High Court (per Ravani J) stated the legal position in these terms :—

"The petitioners may not have any legal right to occupy land of the public street. At the most they would be in the position of unauthorised occupants. Therefore, at the highest they may be described as persons who have committed civil trespass. But trespassers also have a right to be dealt with in just, fair and reasonable manner. They cannot be removed in high-handed, ruthless and inhuman manner, much more so when the authorities were restrained from taking action by a Court of competent jurisdiction."

4.18. *Earlier Gujarat case laying down certain propositions*—In an earlier case, <sup>4/13</sup> the Gujarat High Court (per Ravani J) has indicated what is just, fair and reasonable procedure in such type of cases, in these terms :—

"(i) The respondent-Authorities shall not take any action of removal of the petitioners from the business premises occupied by them without affording them an opportunity of being heard.

(ii) Such opportunity of being heard would also include :

(a) notice in writing to be served upon each of the occupant, calling upon him to show cause as to why he should not be removed from the place in question;

(b) the occupant concerned shall be afforded an opportunity of leading evidence in response to the notice; and

(c) the occupant concerned shall also be afforded an opportunity of being heard in person either by himself or through an Advocate;

(iii) In case the respondent-Authorities, after the enquiry as stated hereinabove, come to the conclusion that the occupant concerned is required to be removed from the place, and any decision adverse to the occupant is taken, the same shall not be implemented for a period of one month from the date of communication to the occupant.



(iv) The order that may be passed by the respondent-authorities shall be served upon the occupant preferably by registered A.D. post. The same shall also be sent by an ordinary post under certificate of posting and the order shall also be affixed on the premises in question."

4.19. *Reasoning in 1989 case*—The heart of the reasoning in the Gujarat case of October 17, 1989 lies in the following passage, occurring towards the end of the judgement in paragraph 14 :

"14. Would a citizen be not within his rights to assert that if a smuggler, a murderer or tax-evader is entitled under the provisions of the statute to say that his property be not attached without issuing seizure memo and without recording panchnama, I am an honest person doing lawful business and I am compelled to use public street out of sheer necessity and therefore please do not remove my property without making note thereof and without recording panchnama ? While doing so all that a citizen claims is equal treatment. In all earnestness his claim is that I am poor little Indian. Before you rob me of my belongings, treat me on par with smugglers, black-marketeers, profiteers, tax-evaders, murderers and dacoits. We think that the claim is just and proper and no authority exercising powers under the Constitution and a valid statute would be justified in denying this legitimate claim. We are of the opinion that whenever there is no statutory provisions prescribing just, fair and reasonable procedure for removal of obstructions on public street, the procedure which is meant for effecting seizure and removal of property under the Criminal Procedure Code should as far as possible be made applicable to the removal of such alleged obstructions from the land of public street. Whenever it is shown that such procedure is not followed, the action of the authority will have to be labelled as unjust and arbitrary. Therefore, the submission that the petitioners have no right to occupy the land and therefore they could be removed has no merits and the same cannot be accepted."

4.20. *Conclusion*—The courts have evidently been making a humane approach to the problem within the limitations and parameters of the extant law. But the law at present does not afford adequate protection to the slum and pavement dwellers beyond making it incumbent on the concerned authorities to afford them an opportunity of hearing. The need for imposing an obligation to provide the slum dwellers with an alternative accommodation or dwelling site is therefore a felt need of the times.

## CHAPTER V

### PROVISIONS IN MUNICIPAL ACTS

5.1. *Provisions in Municipal Acts*—The Commission notes that in many of the Municipal Acts, there is a provision for the removal of “articles” deposited in certain places, and for the removal of obstructions. Often, it is in exercise of the powers conferred by these provisions that the Municipal Corporation takes action, with or without notice, to remove the articles and obstructions and adopts other consequential measures to forcibly evict the occupants of the premises in question.

5.2. *Provision in the Bombay Municipal Act*—The provisions of the Bombay Municipal Corporation Act (3 of 1988) on the subject of removal of encroachments from pavements and public streets came up for consideration before the Supreme Court in the well known pavement dwellers’ case.<sup>5/1</sup> These provisions (so far as material for the present purpose) are as under :—

“Section 312. *Prohibition of structures or fixtures which cause obstruction in streets*. (1) No person shall, except with the permission of the Commissioner under section 310 or 317, erect or set up any wall, fence, rail, post, step, booth or other structure or fixture in or upon any street or upon or over any open channel, drain well or tank in any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy, any portion of such street, channel, drain well or tank”.

“Section 313. *Prohibition of deposit, etc. of things in streets*. (1) No person shall, except with the written permission of the Commissioner—  
(a) Place or deposit upon any street or upon any open channel, drain or well in any streets (or in any public place) any stall, chair bench, box, ladder, bale or other thing so as to form an obstruction thereto or encroachment thereon.”

“Section 314. *Power to remove without notice anything erected deposited or hawked in contravention of section 312, 313 or 313A*. The Commissioner may, without notice, cause to be removed—

(a) any wall, fence, rail, post, step, booth or other structure or fixture which shall be erected or set up in or upon any street, or upon or over any open channel, drain, well or tank contrary to the provisions of sub-section (1) of section 312, after the same comes into force in the city or in the suburbs, after the date of the coming into force of the Bombay Municipal (Extension of Limits) Act, 1950 or in the extended suburbs after the date of the coming into force of the Bombay Municipal Further Extension of Limits and Schedule BBA (Amendment) Act, 1956.

(b) any stall, chair, bench, box, ladder, bale, board or shelf or any other thing whatever placed, deposited, attached, or suspended in, upon, from or to any place in contravention of sub-section (1) of section 313;

(c) any article whatsoever hawked or exposed for sale in any public place or in any public street in contravention of the provisions of section 313A and any vehicle, package, box, board, shelf or any other thing in or on which such article is placed or kept for the purpose of sale.”

By section 3(w), “street” includes a causeway, footway, passage etc. over which the public have a right of passage or access.

5.3. The following extracts<sup>5/2</sup> are from the *Delhi Municipal Corporation Act, 1957* :—

“320. (1) No person shall, except with the permission of the Commissioner granted in this behalf, erect or set up any wall, fence, rail, post, step, booth or other structure whether fixed or movable or whether

of a permanent or temporary nature, or any fixture in or upon any street or upon or over any open channel, drain, wall or tank in any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy any portion of such street, channel, drain, well or tank.

(2) Nothing in this section shall apply to any erection or thing to which clause (c) of sub-section (1) of section 325 applies."

321. (1) No person shall, except with the permission of the Commissioner and on payment of such fee as he in each case thinks fit, place or deposit upon any street, or upon any open channel, drain or well in any street or upon any public place any stall, chair, bench, box, ladder, bale or other thing whatsoever so as to form an obstruction thereto or encroachment thereon.

(2) Nothing in sub-section (1) applies to building materials."

"322. The Commissioner may, without notice, cause to be removed—

(a) any stall, chair, bench, box, ladder, bale or other thing whatsoever, placed, deposited, projected, attached or suspended in, upon, from or to any place in contravention of this Act;

(b) any article whatsoever hawked or exposed for sale on any public street or in any other public place in contravention of this Act and any vehicle, package, box or any other thing in or on which such article is placed."

5.4. *Provision in the U.P. Municipalities Act*—Section 265 of the U.P. Municipalities Act, 1916 is another example of a provision which deals with obstructions. It is enough to quote sub-sections (1), (2) and (3) of section 265, which read as under :—

"265. *Obstruction of street.* (1) Whoever without the written permission of the board :—

(a) causes or allows any vehicle, with or without an animal harnessed thereto, to remain or stand so as to cause obstruction in any street longer than may be necessary for loading or unloading or for taking up or setting down passengers, or

(b) leaves or fastens any vehicle or animal so as to cause obstruction in any street, or

(c) exposes any article for sale, whether upon a stall or booth or in any other manner, so as to cause obstruction in any street, or

(d) deposits, or suffers to be deposited, any building materials, box, bale, package or merchandise in any street, or

(e) erects or sets up any fence, rail, post, stall or any scaffolding or any other such fixture in any street, or

(f) in any manner willfully obstructs or causes obstruction to the free passage of any street.

shall be liable upon conviction to fine which may extend to five hundred rupees and in case of a continuing breach to a further fine which may extend to ten rupees for every day after the day of first conviction during which the offender is proved to have persisted in the commission of the offence.

(2) The board shall have power to remove any obstruction referred to in sub-section (1), and the expense of such removal shall be recoverable from the offender in the manner provided by Chapter VI.

(3) The power exercisable by a board under sub-section (2) to remove obstruction from streets shall also be exercisable for the removal by the board of obstruction from any open space, whether vested in the board or not, which is not private property.

5.5. *Conclusion*—The aforesaid provisions and analogous provisions of similar statutes invest wide powers which are usually resorted to for evicting slum dwellers. And the slum dwellers are exposed to the risk of being rendered roofless. Hence arises the need for affording them reasonable protection to the extent possible in order to save them from destitution.

## CHAPTER VI

### CASE FOR EXTENDING LEGISLATIVE PROTECTION

6.1. *Need for appropriate legislation*—On a survey of the material contained in the preceding chapters, we have come to the conclusion that if the right to life is to carry a meaning for the persons dwelling in slums and pavements, its content must be defined by appropriate legislation. Up to now, citizens have filed writ petitions, mostly in the form of public interest litigation, for ventilating their grievances in this regard. But it appears to us that this has not proved to be a very satisfactory method of establishing, or getting a clarification for, citizen's rights. The judicial procedure is tardy and expensive, for nobody's fault. Ascertaining and enforcing the remedy and identifying its precise conditions will depend upon the view the courts take of the facts and law in each case.

6.2. *Difficulties*—We further apprehend that the courts would also be finding themselves faced with difficult situations. The reason, we presume, is this. On the one hand, the provisions in enactments relating to municipalities leave almost no option to the Municipal Authority except to take action for the eviction of unauthorised occupants of slums and pavements. On the other hand, with the expanding dimensions of article 21 of the Constitution (which are wide but uncertain), courts realise that life and shelter go together. Without a roof over the head, neither body nor soul can function effectively. To balance the statutory power of eviction contained in legislation relating to Municipalities against the implications of the right to life is not an easy task. No doubt, courts have, within the limitations resulting from statutory law, attempted to give relief on some basis or the other. Sometimes they are able to find that Government has given an assurance to help slum dwellers and on the strength of this assurance, effective relief can be given by the judges. Occasionally, the courts are able to give relief resorting to various principles regarding grant or refusal of injunctions or other discretionary relief. The principles of natural justice also come to the rescue of the litigant but only to a limited degree.

6.3. *Paramount need for enacting statutory provisions*—It is against the background of this judicial scenario that we have come to the conclusion that the time has come to give a statutory shape to whatever remedies or safeguards the country may wish to incorporate in its legal system, for safeguarding against harsh action in the shape of eviction of pavement and slum dwellers. Our own view is that *before they are evicted they must be offered alternative shelter or site or facility such as sleeping sheds like "Rain Baseras"* (hereafter all the three are referred to as facility for the sake of convenience) unless it is, in the considered opinion of the State Government, impossible to do so or the larger public interest demands their eviction even when no alternative can be offered to them. It is also necessary to provide for their rehabilitation in case they are evicted, for the whole exercise will be meaningless if they are eventually rendered roofless without hope of succour. A provision requiring the State Government to rehabilitate them is, therefore, called for. We propose to make appropriate recommendations in this behalf hereafter. But protection against eviction will prove futile if the slum dwellers are not provided with essential facilities to enable them to live as human beings. The need in this behalf will be examined in the paragraphs to follow.

6.4. *Withholding or denying civic amenities and essential facilities, supplies and services*—The slum dwellers in occupation of their units situated within the municipal limits are so often refused essential facilities, such as, civic amenities, sanitary services, water supply, street lighting, electricity supply, approach road, etc. Two grounds are mentioned in order to support such withholding or denying, viz., (1) that they are in unauthorised occupation of land and/or (2) that they do not make any contribution by way of municipal taxes, etc.

6.5. *Is such refusal or denial justified*—The underlying motive in seeking support from the fact that the slums have been raised without authority is more often than nought to exert pressure on the slum dwellers in order to evict them. Slums come into existence because of the helplessness of the occupants obliged to seek shelter in a situation of desperation arising in the context of —

(1) extreme poverty,

- (2) migration from rural areas in order to stave off starvation and unemployment in the hope to secure some employment—even if that of a fleeting nature—and bread for the women and children of the desperate men-folk,
- (3) non-availability of living accommodation even of a wretched condition in the cities.

Their helplessness should evoke sympathy rather than antipathy. The comparatively better off citizens and the local authorities owe it to their unfortunate brethren and sisters to ameliorate their distress to the extent possible at least out of humane considerations. They should not, therefore, be denied essential facilities on such grounds. So long as they have to live, they should be enabled to live as human beings. Besides considerations of enlightened self-interest also demand the adoption of this course. If insanitary and unhygienic conditions prevail in the slums, they would be exposed to diseases and epidemics, which may in course of time infiltrate into the other areas and cause diseases and epidemics to spread in other areas as well. Civil amenities, sanitary services, water supply, electricity and such other facilities should not be withheld to the slum dwellers for the aforesaid reasons.

6.6. *Need for statutory protection against withholding of essential services and facilities*—In order to make the statutory protection of slum dwellers against eviction meaningful and effective, it is, therefore, desirable to provide that a local authority shall not withhold or refuse to provide any essential supply or service to a slum dweller without just or sufficient cause or discontinue or cut off the same without giving notice to the occupant to set right the fault or defect if an existing supply is sought to be discontinued or cut off. Minimum two months notice is what is required so that the occupier gets sufficient time to make good the fault, defect or deficiency on the basis of which the existing supply or service etc. is withheld etc. For this purpose, "essential supply or service" should include water supply and conservancy and electricity services. Contravention of this provision should be visited with suitable penalty, as also by suitable remedial action by the civil court. Besides this, since the matter concerns essential services, there should be adequate provision for the award of interim relief for restoration of supply by the civil court and also for passing (at the final stage) orders awarding compensation in case of wrongful deprivation of essential service, etc.

6.7. *Bodies other than local authorities*—Sometimes, such services are provided by bodies other than municipal corporations or municipal committees. They should also be subjected to the same obligations as we have proposed above for local authorities, in regard to the provision of essential services, etc., to consumers in slum areas.

6.8. *Statutory protection to the pavement dwellers*—While the plight of the slum dwellers is considerable, that of the pavement dwellers is much more. They also need protection against arbitrary deprivation of shelter for the night. Considerations of social and economic justice would seem to demand that the law should step in to extend appropriate protection by way of incorporating a suitable and uniform policy on the subject. At the same time, while providing such protection, regard must be had to the fact that there may be overriding considerations of law and order of public interest demanding urgent action for their removal on some occasions or situations. A special provision will have to be made giving a dispensing power to some responsible authority, say, Commissioner of Police (or other officer of corresponding status), so that the statutory protection may not result in detriment to larger public interest.

6.9. We accordingly propose to make appropriate recommendations for enacting legislation in this behalf in due course in order that aforementioned essential facilities and services are not withheld or existing services are not discontinued either in respect of the slum area or in respect of the slum dwellers and for affording appropriate statutory protection to the pavement dwellers.

## CHAPTER VII THE CONSTITUTIONAL POSITION

7.1. *Whether Central Legislation is competent*—It is appropriate to examine the question as regards the competence of the Centre to legislate on this subject, viz., proposal to extend legislative protection to the slum and pavement dwellers by way of providing them an alternative site, accommodation or facility and thereby rehabilitating them in the event of their being required to be evicted.

7.2. *Relevant legislative entries in the Union List*—The relevant legislative entries in the lists given in the Seventh Schedule to the Constitution may first be noted. The union List does not contain an entry directly and specifically applicable to the subject, except the residual entry 97—“Any other matter not enumerated in List II or List III, including any tax not mentioned in either of those Lists.

7.3. *Relevant legislative entries in the Concurrent List*—The Concurrent List contains the following entries, possibly relevant to the subject :—

*Concurrent List, entry 1.*—“Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.”

*Concurrent List, entry 2.*—“Criminal Procedure, including all matters included in the code of Criminal Procedure at the commencement of this Constitution.”

*Concurrent List, entry 6.*—“Transfer of property other than agricultural land, registration of deeds and documents.”

*Concurrent List, entry 7.*—“Contracts. . . . .”

*Concurrent List, entry 8.*—“Actionable wrongs.”

*Concurrent List, entry 13.* “Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.”

*Concurrent List, entry 20.*—“Economic and social planning.”

*Concurrent List, entry 23.* “Social security and social insurance, employment and unemployment.”

In the above enumeration, all the possibly applicable entries have been listed for consideration. Of course, if none of these specific entries applies, then the Residuary entry of the Union List will apply, as a last resort.

7.4. *Supreme Court case on land.*—In order to overcome a possible argument that the subject matter of the proposed legislation will not fall under the legislative competence of the Centre in the context of entry 18 of the State List pertaining to land,<sup>7/2</sup> It is enough to refer to a Supreme Court case of 1969. In that case,<sup>7/2</sup> the question at issue was a narrow one namely, whether the Centre can legislate to provide for eviction and rent control, etc., in respect of house accommodation in cantonments. The Supreme Court answered the question in the affirmative, relying on Union List, entry 3—“Delimitation of cantonment areas, local-self government in such areas. . . . regulation of house accommodation (including the control of rents) in such areas.” The control of rent, the court held, would include protection against eviction also. The Supreme Court rejected the contention that State List, entry 18 “land” would apply.

In this context, the Supreme Court did take note of the various High Court decisions as to the interpretation of the entry relating to land.

It was in this context that the court referred to the Bombay case of A.C. Patel v. Vishwanath 7/3 and then expressed itself as under :—

“The Nagpur High Court in *Kewalchand v. Dashrathlal (a)* proceeded on the assumption that the decision in the case of *A.C. Patel v. Vishwanath*

Chada (supra) correctly defined the scope of entry 2 in List I of the Seventh Schedule to the Government of India Act, and considered the narrow question whether the relationship of landlord and tenant specifically mentioned in entry 21 in List II of that Act, which covered the requirement of permission to serve a notice for eviction in regulating the relation of landlord and tenant, and fell within the scope of entry 21, List II or in entry 2 in List I of that Act. The court held that it substantially fell in entry 21 in List II and not in entry 2 in List I. The court did not consider it necessary to express any opinion on the question whether the expression "regulating of house accommodation" included something besides what Chagla, C.J., had said was its ambit in the case of *A.C. Patel v. Vishwanath Chada*(b) (supra), but expressed the opinion that the expression could not be stretched to include the aspect of the relation of landlord and tenant involved in that particular case. It is clear that, in that case also, a narrower interpretation of the expression "regulation of house accommodation" was accepted, because it appears that there was no detailed discussion of the full scope of that expression. "Similar is the decision of the Patna High Court in *Babu Jagtanand v. Sri Satyanarayanji Lakshmiji through the Shabait and Manager Jatanund Das* (c). In fact, this last case merely followed the decision of the Bombay High Court in the case of *F.E. Darukhanawala v. Khamchand Lalchand* (d) (supra). On the other hand, the Rajasthan High Court in *Nawal Mal v. Nathu Lal* (e) held that the power of the State Legislature to legislate in respect of *landlord and tenant of buildings* is to be found in Entries 6, 7 and 13 or List III of the Seventh Schedule to the Constitution, and not in Entry 18 of List II, and that that power was circumscribed by the exclusive power of parliament to legislate on the same subject under Entry 3 of List I. *That is also the view which the Calcutta High Court has taken in the Judgment in appeal before us. We think that the decision given by the Calcutta High Court is correct and must be upheld.*"

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- (a) *Dashrathlal v. Kewalband*, ILR 1956 Nag 618, AIR 1956 Nag 268.  
 (b) *A.C. Patel v. Vishwanath*, AIR 1954 Bom 204.  
 (c) *Babu Jagtanand v. Sri Satyanarayanji Lakshmiji*, ILR 40 Pat 625  
 (d) *F.E. Darukhanawala v. Nawal Mal*, ILR 1954 Bom 544.  
 (e) *Nawal Mal v. Nathu Lal*, ILR 11 Raj 421.

*We are mentioning this judgment to show the limited scope of the entry relating to "land", not covering various measures which do not directly touch land.*

7.5. *Public premises Act.*—In a recent case <sup>7/4</sup> the Supreme Court has held that the Public Premises (Eviction of unauthorised occupants) Act, 1971, in so far as it relates to premises of the Government, falls under Union List, entry 32 (property of the Union . . . . .) and in so far as it relates to lessees or licensees of premises of Government companies, it falls under Concurrent List, entry 6, 7 and 46. Concurrent List, entry 6 relates to transfer of property other than agricultural land, while entry 7 relates to contracts etc., and entry 46 relates to the jurisdiction of courts etc. This judgment of 1990 is confined to licensees or lessees of premises belonging to a Government company. On that point, the Supreme Court reaffirmed the view taken by it in 1989, <sup>7/5</sup> holding that the Public Premises Act falls in the Concurrent List.

7.6. *Social security and rehabilitation.*—We now turn to the Concurrent List entry 23 which reads as under :—

“23, *Social security and social insurance, employment and unemployment.*”

Besides this, the Concurrent List, entry 27 empowers the enactment of legislation for “relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.” It appears that West Bengal Land Development and Planning Act, 1940 was held to fall under this entry (entry 27). <sup>7/6</sup>

*In our view, the proposed legislation can be regarded as falling under “social security” on the reasoning that in interpreting Concurrent List, entry 23, one finds support from entry 27. The Constitution makers did not mention relief and rehabilitation in general in the Concurrent List, and concentrated on refugees from Pakistan, obviously because, at that time, that was the principal problem very much before them. It cannot, however, be gainsaid that rehabilitation of evicted slum or pavement dwellers by way of rehabilitation is an essential component of ‘social security’ in general.*

7.7. *History of social security.*—In this context, it may be desirable to examine the meaning of the expression “social security.” The concept of social security in a wide sense, that is to say, governmental as well as voluntary social security, has a fairly long history, because the basic sources of social welfare, viz poverty, disability, disease and dependence, are as old as society itself. Initially, religion and philosophy tended to provide a framework for the conduct of social welfare. <sup>7/7</sup> However, as society developed, there arose more systematic responses to the factors that rendered individuals (and thus, society at large), vulnerable. Social security programmes sponsored by Government, such as social assistance and social insurance, became prominent. While the Poor Laws in many countries, including England and Germany, came on the statute book as early as the 16th and 17th centuries, the first general social insurance scheme appears to have been introduced in Germany in 1883. The scheme of Chancellor Bismark (1883), for sickness insurance by law, provided to employees (in defined types of industries), *both medical care and cash benefit*, during a period of sickness, to be paid for out of contributions from both employers and employees.

This was followed by a law of 1884 in Germany, making accident insurance compulsory and, later, by a law providing pension for all workers from the age of 70 (1880). Germany's example was followed by Austria (1888), Italy (1893) and Sweden and Netherlands (1901). <sup>7/8</sup>

In the United Kingdom, in 1889, Government carried out an enquiry into the income of 12,000 elderly persons and in 1908, in Britain, pensions at age 70 were introduced. Later, in the Continent, unemployment insurance was introduced, in Belgium and France family allowances were provided for.

In the United States, the Social Security Act of 1935 provided federal grants for public assistance by the State to the aged, blind, disabled and dependent children and also established a federal old age insurance scheme and federal financial backing for State plans for unemployment insurance. <sup>7/9</sup>

7.8. *Beveridge Report.*—A major influence on world developments in the field of social security was the British Government Report (Beveridge Report, 1942), which recommended (i) the maintenance of full employment as a responsibility of government, (ii) family allowance for all children after the first child, (iii) comprehensive health care for the whole population, and (iv) a unified national scheme of social insurance run by the State with the safety net of a unified scheme of social assistance.



7.9. *Social security benefits.*—It may be safely asserted that benefits in kind are also a part of social security which is not expressly or impliedly restricted to 'cash' benefits. For example, as already mentioned,<sup>7,10</sup> the first national compulsory health insurance scheme introduced in Germany in 1883 represented a benefit in kind, and was built upon precedents going back many years in the separate German States.

In fact, National Health Schemes throughout the world are of three types viz,<sup>7,11</sup>

- (i) direct service approach in which the *Government provides* the facilities;
- (ii) indirect contract with the providers, in which private hospitals or practitioners provide the service, but the *State pays the provider* for services used, and
- (iii) reimbursement, in which the patient pays the bill and submits the receipted bill for reimbursement. The first system prevails in the United Kingdom, the second system prevails in Belgium, West Germany and the Netherlands, while the third system is widely used in France and some Northern European countries and (to some extent) in Australia and Sweden.

The first category mentioned above shows that benefits in kind have formed a part of social security.

7.10. *Coverages wide enough to embrace benefits in kind.*—The Encyclopaedia Britannica gives the following examples of social security.

“Thus, social security may provide cash benefits to persons faced with sickness and disability, unemployment, crop failure, loss of the marital partner, maternity, responsibility for the care of young children, or retirement from work. Benefits may be provided in cash or kind for medical need, rehabilitation, domestic help during illness at home, legal aid, or funeral expenses. Social security may be provided by court order (e.g. to compensate accident victims), by employers (sometimes using insurance companies), by central or local government departments, or by semi-public or autonomous agencies. (a).

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(a) Encyclopaedia Britannica, Macropaedia (1987) vol. 27 page 427.

7.11. *I.L.O. Report.*—In 1984, the International Labour Office Report by ten experts was published 7/12 That report set out the ultimate aims of social security as under :—

“Its fundamental purpose is to give individuals and families the confidence that their level of living and quality of life will not, insofar as is possible, be greatly eroded by any social or economic eventuality. This involves not just meeting needs as they arise, but also preventing risks from arising in the first place, and helping individuals and families to make the best possible adjustment when faced with disabilities and disadvantages which have not been or could not be prevented. . . . . *It is the guarantee of security that matters most of all, rather than the particular mechanisms such as contributory or tax financing the insurance or service model of delivery, or the ownership of facilities (public/private, profit/non-profit) by which that guarantee is given. . . . . The means should not be confused with the ends.*”

7.12. *Provision against want the main objective.*—*It would thus be evident that provision against want is the main objective of social security and that in the context of the pathetic situation prevailing in the sphere of failure to provide a roof over the heads of millions of citizens of India, entry 23, viz., “social security,” has to be construed by making a broad, liberal, humane, and pragmatic approach and interpretation.*

7.13. *Residuary power.*—It may be mentioned out of abundant caution that if it is considered that entry 23 pertaining to social security is not applicable, recourse can in any case be safely made to the residuary power of the Centre to legislate under entry 97 of the Union List, viz., “Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists” in as much as neither “housing” nor ‘rehabilitation of uprooted or roofless citizens upon eviction’ are specified in either List II or List III.

It would be appropriate in this connection to refer to the N.C.U. Report 7/13 from which we quote :—

“11.6.31 Cohesive legislative support for housing has been lacking, in the Constitution of India, housing does not find specific mention. However, in so far as housing for industrial labour is concerned, item 24 of List III (Concurrent List) may be said to cover it because it deals comprehensively with the welfare of labour. This would place the subject in the Concurrent List with which both the Union and State Governments are concerned. The residual powers in relation to the subjects not mentioned in the State or Concurrent Lists, however, vest in the Union legislature. As such, the Union Government may be said to be directly concerned with the subject of housing in general.”

In any view of the matter it cannot be gainsaid that the Centre has the requisite competence to legislate on the subject in question.

## CHAPTER VIII

### LEGISLATION PERTAINING TO SLUMS—AS IT IS— AND AS IT OUGHT TO BE

8.1. It is somewhat unfortunate that while a number of States have enacted legislation which has addressed the problem of slums, none of these legislations touch the core of the real problem of rehabilitating the evicted slum dwellers or pavement dwellers who are roofless and shelterless.

8.2. *Slum clearance and slum improvement—The trends*—A study of action relating to slums in India shows that there has been a transition from slum clearance to slum improvement. This is also apparent from the course that various Five Year Plans took. As has been pointed out,<sup>8/1</sup> the change was occasioned by several factors. Not only the financial outlays were likely to have fallen short of requirements if the slum clearance programme was implemented on a national scale, but also, there was resistance on the part of the population to shifting. The new units were far away from their work places and were beyond their range of availability. Land acquisition near the place of work invited intervention at the instance of interested parties, with the result that the progress was baulked.

Gradually, there arose the minimum needs programme (MNP), whose object was to maintain basic levels of social consumption of goods to all citizens and to level up regional imbalances in the distribution of basic social services. This embraced,<sup>8/2</sup> *inter alia*, environmental improvement programmes.

8.3. The existing legislations are essentially aimed at protecting the tenants of privately owned structures or chawls which are in uninhabitable conditions. The legislations have presumably been necessitated by reason of the fact that the owners or landlords of such structures are not interested even in maintaining these properties in a habitable condition as it is either unprofitable or unpractical to do so *inter alia* in the context of the rent-restriction legislations.

8.4. Some of the factors which operate on their minds can be visualised :—

- (1) While building material costs and labour costs have risen by several hundred per cents, the rents have been pegged at pre-inflation levels. It is, therefore, economically a losing proposition to spend funds on maintaining or improving such properties.
- (2) If the tenants get exasperated and vacate, the landlord would be enabled to pull down the structures and sell the land at handsome prices fetched on account of the dizzy heights attained by land prices.
- (3) Some owners may not have financial resources to develop the properties even if they were desirous of doing so.

8.5. Be that as it may the fact remains that such structures or chawls pose danger to the occupants/tenants inasmuch as these are liable to collapse and result in loss of life or are rendered unfit for habitation on account of falling in disrepair and/or prevailing insanitary conditions giving rise to diseases and epidemics. It is substantially to overcome such a situation that most of the legislations are enacted, as will be disclosed by a synopsis of such legislations. (see *Appendix* to the report).

8.6. So far, so good. But the legislations do not aim at rehabilitation of citizens living in slums which have mushroomed around cities and towns. Such slums have cropped up mostly on public lands belonging to municipal authorities or on open unbuilt lands which have been encroached upon by the very poor sections of the citizens who are roofless and shelterless.

8.7. The community cannot afford to be unconcerned, insensitive or indifferent to the problem of such citizens without qualms of conscience, particularly as the Directive Principles of State Policy enshrined in articles 38, 39, 41 and 43 of the Constitution of India enjoin the community to endeavour to rescue them from their plight.

8.8. It is, therefore, necessary to enact a legislation which will provide them succour by protecting them from being obliged to treat the open skies as roofs over their heads or their huts being razed to the ground by civic authorities without providing them or at least without making the maximum effort to provide them with alternative facilities in place of the huts or footpaths from which they are evicted.

8.9. It is such legislation for rehabilitation of the roofless that slum clearance legislation having a positive perspective and positive thrust must aim at instead of being contented by legislation protecting them from the privately-owned slums. And that is the thrust of the legislation proposed to be recommended by the present report.

## CHAPTER IX

### CONCLUSIONS AND RECOMMENDATIONS

#### *Conclusions*

9.1. With nearly 3.5 crores of citizens of India living in sub-human condition in slums and on pavements of metropolitan cities of India, the rest of the members of the community cannot sleep in peace with an easy conscience. In any event the community cannot watch their plight nonchalantly when the slum and pavement dwellers are evicted by the local authorities without providing them any alternative facility even from these slums and pavements, so often, razing their huts to the ground with the help of bulldozers in the course of their slum removal operations.

#### II

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

#### III

9.3. Presently there exists no legislation affording any protection to the slum and pavement dwellers in the event of their being evicted from these slums or pavements by the local authorities, apart from the fact that there is no social security scheme designed to rehabilitate them on their eviction. There is, therefore, a pressing need, in the light of constitutional values, humane considerations and as a matter of social justice, for inserting into our legal system a requirement by way of a central legislation to the effect that before slum dwellers are evicted by local authorities, it shall be the duty of the concerned local authority to provide alternative site, accommodation or facility to such evictees, and providing that the pavement dwellers are not disturbed unless it is inevitable to do so in the context of some emergent situation.

#### IV

9.4. It will also be appropriate to provide that slum dwellers are not denied civic facilities such as water supply, street lighting, electricity, etc., on the ground that they are in illegal occupation of the land on which the slums have come into existence.

#### *Recommendations*

#### I

9.5. It is therefore recommended that a central legislation be enacted providing that notwithstanding any provision contained in any local law, slum dwellers shall not be evicted without providing to them alternative accommodation by way of a site for shifting their huts or other accommodation or facility so as not to render them shelterless or roofless. Such alternative accommodation, site or facility offered for rehabilitation shall be within as short a distance as may be reasonably practicable, having regard to the circumstances, of the place from where the slum dwellers are sought to be evicted. In the event of any dispute as to whether the alternative accommodation, site or facility is within such reasonable distance of the said place, the decision of the District Judge of the Court having jurisdiction in respect of the concerned area shall be final.

#### II

9.6. It appears that a provision absolutely prohibiting the eviction of a slum dweller etc., unless alternative accommodation site or facility is provide, might not be workable in practice, and that there should be some power in the Government to dispense with the proposed statutory requirement in appropriate cases. In our opinion, the best course would be to invest the State Government with the power to dispense with the proposed statutory requirement of providing alternative accommodation or facility to the proposed evictee if two conditions are cumulatively satisfied, namely :—

- (i) the State government is satisfied that it is not reasonably practicable, in the circumstances of the case, to provide alternative accommodation, site or facility as envisaged by the proposed provision, and
- (ii) the State government further records in writing its satisfaction that public interest demands that such eviction, resulting in rendering the occupants roofless, requires to be proceeded with, notwithstanding the fact that alternative accommodation or facility cannot be provided by the concerned local authority or the State Government.

## III

9.7. It may also be provided that the protection provided by these provisions shall apply to all slums existing on the date of the enforcement of the Act and to new slums which come into existence thereafter provided the said new slums have existed for at least six months immediately preceding the date of service of the notice on the occupants for taking action by the concerned local authority.

## IV

9.8. It is also desirable to ensure by law that essential services or facilities are not denied or cut off to occupants of slums on the ground of their alleged illegal occupation. The provision could be on these lines :—

- (i) No local authority or other public body, either itself or through any person purporting to act on its behalf, shall, *without just and sufficient cause* other than that the concerned slum dwellers are in illegal or unauthorized occupation of any land,—
  - (a) withhold, deny, refuse to provide any essential supply or service to any slum locality, or
  - (b) cut off or discontinue any such existing supply or service enjoyed by the occupant of any premises in a slum area in respect of the premises so occupied nor shall the supply or service be withheld without serving on the concerned occupants a notice giving clear two months' time to comply with the notice requiring the occupant to remove the cause set out for the proposed action.
- (ii) If a local authority or local body contravenes the above provision, the occupier may make an application to the competent civil court, complaining of such contravention.
- (iii) If the civil court is *prima facie* satisfied that the local authority has acted in contravention of the aforesaid provision, the court shall direct the local authority concerned to provide or restore the supply pending inquiry. Such order may be passed without notice but may be confirmed, varied or vacated after notice and hearing.
- (iv) If the civil court, on inquiry, find that any essential supply or service was denied, withheld or refused to the occupier or if any such supply or service enjoyed by the occupier in respect of the premises was cut off or withheld by the local authority in contravention of the aforesaid provision, it shall make an order directing the local authority to restore such supply or service.
- (v) Without prejudice to the above provisions, the civil court may, in its discretion, direct that appropriate compensation not exceeding one thousand rupees be paid to the occupier by the local authority if the local authority had cut off or withheld the supply or service or failed to provide such service in contravention of the said provision.

For this purpose, "essential supply or service" will include supply of water, electricity, conservancy and sanitary service, and street lighting or lighting in the slum area.

As regards execution of the order passed by the competent civil court for granting of or restoration of essential supply or service, a penal provision may suffice in the following terms :—

*"Penalty for contravention of the aforesaid provision—If any local authority or any officer thereof contravenes the provisions of section... or*

contravenes any order passed by the court in this connection, it or he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both."

## V

9.9. The proposed legislation pertains to eviction by the local authorities. Of course, this expression, as defined in General Clauses Act, 1897, will cover a variety of urban and rural institutions of local self government as also Cantonments.

Incidentally, it may be mentioned in regard to Cantonments that the legislative competence to regulate their powers and functions is vested in Parliament under Union List, entry 3, which reads as under :—

"3. Delimitation of the Cantonment areas, Local Self Government in such areas, the constitution and powers within such areas of Cantonment authorities and the regulation of house, accommodation (including control of rents) in such areas. (a)

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(a) See *Indu Bhushan v. Rama Sundari*, 1969 (2) SCC 289, 292, 293, 294, 296, 298.

## VI

9.10. *Need for provision regarding rehabilitation*—The Commission is further of the view that in order that the object of providing of social security in the matter of housing may be effectively achieved, it is necessary that if a person dwelling in a slum area is evicted, then the State should provide for appropriate rehabilitation of the person evicted. Our detailed recommendation on this point may be stated as under :

If alternative accommodation under the recommendation already made in the provision proposed to restrict eviction cannot be immediately provided, the State Government (even if it grants permission for eviction) shall, within a reasonable period not exceeding one year in any case, make arrangements for the rehabilitation of the persons evicted in regard to housing, and in making such alternative arrangement, the State Government shall, as far as is reasonably practicable, have regard to the factors specified in the proposed provision relating to restriction on eviction without alternative accommodation.

## VII

9.11. *For pavement dwellers*—Statutory protection should be extended to the pavement dwellers by providing that notwithstanding any provision contained in any local law for the time being in force, no person using a pavement for shelter or for sleeping or taking refuge shall be evicted therefrom unless the Commissioner of Police or his deputy authorized in this behalf has recorded his satisfaction in writing that it is essential to do so for either maintaining law and order or on the ground that public interest so demands having regard to some special circumstances or to deal with a situation calling for urgent action in this behalf.

9.12. These recommendations, if and when accepted and acted upon, we trust, will alleviate the distress of the luckless slum dwellers and pavement dwellers, to the extent possible by legislation.

We recommend accordingly.

(M. P. THAKKAR)  
CHAIRMAN

(Y. V. ANJANEYULU)  
MEMBER

(P. M. BAKSHI)  
MEMBER

(G.V.G. KRISHNAMURTY)  
Member Secretary

Member

NEW DELHI, DATED THE 20TH DECEMBER, 1990.



## Notes and References

### Chapter II

- 2/1. Muttalib and Mohd Akbar Ali Khan, Public Housing, published by Regional Centre for Urban and Environment Studies (1986) page 4, para 1.9.
- 2/2. Muttalib and Mohd Akbar Ali Khan, Public Housing published by Regional Centre for Urban and Environment Studies (1986), page 3, para 1.8.
- 2/3. Cherunilam and Heggade, Housing in India (1987) page 49.
- 2/4. Oxford Advanced Learner's Dictionary of Current English.
- 2/5. Socio-Economic Survey of Slums in Old Delhi cited in Andrea Menefee Singh, "Poverty and Slum Dwellers in Urban India—Some Urgent Research and Policy Considerations", (April—June 1978) Social Action, page 165.
- 2/6. Paper on Urban Poverty in India; Policies and Programmes, by the Centre for Environmental Planning and Technology, Ahmedabad, published in National Commission on Urbanisation, Report (August 1988), Vol. V, Part II pages 59, 60.
- 2/7. National Commission on Urbanisation Report (August 1988) Vol. V, Part II, page 60.
- 2/8. Paper on Urban Poverty in India : Policies and Programmes, by the Centre for Environmental Planning and Technology, Ahmedabad published in National Commission on Urbanisation, Report (August 1988), Vol. V Part II, pages 55 to 59.
- 2/9. Cherunilam and Heggade, Housing in India (1987) page 52.
- 2/10. Report of the National Commission on Urbanisation (Aug 1988) Vol. II Part III pages 94, 95 para 5.7.1 to 5.7.3, 5.8.3, 5.9.1.
- 2/11. M.C.K. Swamy, "Slums : ruralisation of Urban India" (April, June 1987) Nagarlok 22, 24
- 2/12. TCPO Ministry of Works and Housing, *A Compendium on Indian Slums* (1985).
- 2/13. R.K. Awasthi, "Urban Development in an Industrial City" (April, June 1984) Nagarlok 20 29, 30.

### Chapter III

- 3/1. P.K. Muttagi "Urban Poverty : The Bombay Scene (October—December 1988)" 111, 114—115 Nagarlok.
- 3/2. *Olga Tellis v Municipal Corporation of Bombay*, AIR 1986 SC 180, 201 para 50.
- 3/3. *Olga Tellis v Municipal Corporation of Bombay*, AIR 1986 SC 180, 190 para 23.
- 3/4. *Olga Tellis v Municipal Corporation of Bombay*, AIR 1986 SC 180, 187, para 16.

### Chapter IV

- 4/1. Para 4.2, *infra*.
- 4/2. *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180 to 204.
- 4/3. *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180 to 204.
- 4/4. Id. p. 202 para 51.
- 4/5. Chapter VI, *infra*
- 4/6. *K. Chandru v. State of Tamil Nadu*, AIR 1986 SC 204.
- 4/7. *Olga Tellis v. Union of India*, AIR 1986 SC 180.
- 4/8. *Shantistar Builders v Narayan Khimji Totame*, AIR 1990 SC 630, 633 paragraphs 9 and 10 (Bench of three Judges Ranganath Mishra, P.B. Sawant and K. Ramaswamy, JJ.) (April issue).
- 4/9. *Karanjan Jalsay Y.A.S.A.S. Samiti v. State of Gujarat*, AIR 1987 SC 532.
- 4/10. *Banwasi Sewa Ashram v. State of UP*, AIR 1987 SC 374.
- 4/11. *Surat Municipal Corporation v. Rameshchandra Shantilal Parikh*, AIR 1986 Guj 50 (A.P. Ravani, J.).
- 4/12. *Municipal Commissioner, Bhavnagar Municipal Corporation v Nandumal*, Letters Patent Appeal No. 246 of 1989, decided by A.P. Ravani and J.U. Mehta, JJ (17 October 1989) Gujarat High Court.
- 4/13. *Nehru Marg Cabin Association v. Modasa Nagar Palika*, 29(1) : 1988(1) GLR 441 pp. 444-445 para 6.

### Chapter V

- 5/1. *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.
- 5/2. Section 320 to 322 Delhi Municipal Corporation Act, 1957 (66 of 1957).

*Chapter VII*

- 7/1 "18. Land, that is to say, rights in and over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonisation."
- 7/2. *Indu Bhushan v Rama Sundari*, (1969) 2 SCC 289, 298, 299 para 14, followed in *Saiyada v Hindustan Steel*, (1989) 1 SCC 272, AIR 1989 SC 406.
- 7/3. *A.C. Patel v Vishwanath*, AIR 1954 Bom 204.
- 7/4. *Ashoka Marketing Ltd v Punjab National Bank*, JT 1990(3) SC 417 to 447 (issue dated 13 August 1990).
- 7/5. *Savida Mossare v Hindustan Steel Ltd.* (1989) SCC 272, affirming *L.S. Nair v Hindustan Steel* AIR 1980 MP 106.
- 7/6. *Benoy Krishna v State of West Bengal*, AIR 1966 Cal 429, 430, para 5 (D Basu J).
- 7/7. *Encyclopaedia Britannica, Macropaedia* (1987), Vol. 27 page 421.
- 7/8. *Encyclopaedia Britannica, Macropaedia* (1987), Vol. 27 page 429, 435, 436.
- 7/9. *Encyclopaedia Britannica, Macropaedia* (1987), Vol. 27 page 429.
- 7/10. Paragraph 7.7 *supra*.
- 7/11. *Encyclopaedia Britannica, Macropaedia* (1987) vol. 27 pages 435, 436.
- 7/12. *International Labour Office into the Twenty-first Century, The Development of Social Security* (1984).
- 7/13. *National Commission on Urbanisation Report, Vol. II, Page 219* (August 1988).

*Chapter VIII*

- 8/1. *Paper on Urban Poverty in India : Policies and programmes by the Centre for Environmental Planning and Technology, Ahmedabad printed in National Commission on Urbanisation, Report* (August 1988), Vol. V Part II, page 44.
- 8/2. *National Commission on Urbanisation, Report* (August 1988), Vol. V Part II, pages 46-47 (*Paper on Urban Poverty in India : Policies and Programmed, by the Centre for Environmental Planning and Technology Ahmedabad*).

## SYNOPSIS OF LEGISLATION RELATING TO SLUMS

1. *The Central Act of 1956*—In order to understand the scope of the present legislation relating to slums, it may be convenient to have a brief look at the relevant enactments. It may be mentioned that the Central Act on the subject—the Slum Areas (Improvement and Clearance) Act (96 of 1956)—does not extend to the States, but extends to all Union Territories except Andaman and Nicobar Islands and the Laccadive, Minicoy and Amin divi Islands. Section 3 of the Act gives power to the competent authority (that is, the authority appointed by the Administrator) to declare certain areas as slum areas. Section 4 gives the competent authority power to improve buildings unfit for human habitation and section 6A gives power to the competent authority to enforce restrictions on the erection of buildings in slum areas. Section 7 gives to the same authority power to order the demolition of buildings unfit for human habitation. Sections 9 and 10 of the Act give power to issue a slum clearance order. Section 12 gives to the Central Government power to acquire land in order to enable the competent authority to execute works in slum areas, subject to the payment of compensation. Section 19 prohibits the eviction of tenants in slum areas, without the previous permission of the competent authority.

Section 19(4) of the Central Act of 1956 provides that in granting or refusing to grant such permission, the competent authority shall take into account the following factors, namely :—

- (a) whether alternative accommodation within the means of the tenant would be available to him, if he were evicted;
- (b) whether the eviction is in the interest of improvement and clearance of the slum areas;
- (c) such other factors, if any, as may be prescribed.

2. By section 20 of the Central Act of 1956, an appeal can be filed by a person aggrieved by the refusal of the competent authority to grant permission for eviction. Section 20A provides for the restoration of premises vacated by the tenants in a slum area, who vacate or are evicted, for effecting improvements. Section 20B imposes certain restrictions regarding the rent of buildings in slum areas, let out to the tenants after the execution of the work of improvement or after the building has been re-erected.

3. *Objectives of the Central Act of 1956 : aspect of alternative accommodation*—It would appear that the Supreme Court, in one of the Cases decided under the Slum Areas (Improvement and Clearance) Act, 1956, had occasion to deal with the objectives of the Act of 1956 in these terms <sup>4/1</sup> :—

“The Act, no doubt, looks at the problem not from the point of view of the landlord, his needs, the money he had sunk in the house and the possible profit that he might make if the house were either let to other tenants or was reconstructed and let out, but rather from the point of view of the tenants who have no alternative accommodation and who would be stranded in the open if an order for eviction were passed. The Act itself contemplates eviction in cases where on the ground of the house being unfit for human habitation it has to be demolished . . . . . (and) would seem to suggest that the slum dweller *should not be evicted unless alternative accommodation could be obtained for him*”.

4. *Restoration of possession under Central Act*.—In 1964, Parliament, by amending Central Act of 1956, made provisions regarding restoration of possession of premises vacated by a tenant under the Act and for the rent of building in slum areas (newly inserted sections 20A and 20B.) Section 20A reads as under :—

“20A. (1) Where a tenant in occupation of any building in a slum area vacates any building or is evicted therefrom on the ground that it was required for the purpose of executing any work of improvement or for the

purpose of re-erection of the building, the tenant may, within such time as may be prescribed, file a declaration with the competent authority that he desires to be replaced in occupation of the building after the completion of the work of improvement or re-erection of the building, as the case may be.

(2) On receipt of such declaration, the competent authority shall by order require the owner of the building to furnish to it, within such time as may be prescribed, the plans of the work of improvement or re-erection of the building and estimates of the cost thereof and such other particulars as may be necessary and shall, on the basis of such plans and estimates and particulars, if any, furnished and having regard to the provisions of sub-section (3) of section 20B and after holding such inquiry as it may think fit, provisionally determine the rent that would be payable by the tenant if he were to be replaced in occupation of the building in pursuance of the declaration made by him under sub-section (1).

(3) The rent provisionally determined under sub-section (2) shall be communicated in the prescribed manner to the tenant and the owner.

(4) If the tenant after the receipt of such communication intimates in writing to the competent authority within such time as may be prescribed that when he is replaced in occupation of the building in pursuance of the declaration made by him under sub-section (1), he would pay to the owner until the rent is finally determined Under section 20B the rent provisionally determined under sub-section (2), the competent authority shall direct the owner to place the tenant in occupation of the building after the completion of the work of improvement or re-erection of the building, as the case may be, and the owner shall be bound to comply with such direction."

5. *Andhra Pradesh Act*.—The Andhra Pradesh Slum Improvement (Acquisition of Land) Act (33 of 1956) provides for the clearance of slum areas in the State. Section-3 gives power to the State to acquire land when the State Government is satisfied that any area is, or may be, a source of danger to the public health, safety or convenience of the inhabitants by reason of the area being low lying, insanitary etc. The area so declared becomes a "slum area", as defined within the meaning of section 2 (f) of the Andhra Pradesh Act. Acquisition of land in such area is subject to compensation. The Act makes certain other connected provisions.

6. *Assam Act*.—The Assam Slum Areas (Improvement and Clearance) Act, 1959 (12 of the 1961) (the Act was published in the Assam Gazette in May 1961) mainly provides for the following matters :—

- (i) declaration of the slum areas by the State Government, on report of the authority appointed under the Act or on other information (section 10);
- (ii) improvement of building or land unfit for human habitation, a direction regarding which may be given by the competent authority (section 11);
- (iii) power of the empowered authority to order the demolition of a building which is unfit for human habitation (section 14);
- (iv) power of the State Government to declare a slum area to be a clearance area (section 16), whereafter a slum clearance order can be issued (section 17) and measures can be taken for re-development of the land (section 18).
- (v) power of the State Government to acquire land upon a representation from the empowered authority, in order to enable the authority to execute improvements in slum area or to redevelop a clearance area (section 19).

The Assam Act does not appear to contain any provision prohibiting eviction in slum areas.

7. *The Gujarat Act*.—The Gujarat Slum Areas (Improvement, Clearance and Redevelopment) Act, 1973 contains the following main provisions :

- (a) power of the State Government to declare certain areas as slum areas, under section 3;
- (b) provision for registration of buildings in slum areas under section 4;

- (c) power of the prescribed authority to restrict erection of buildings in slum areas without its permission under section 5;
- (d) power of the prescribed authority to require execution of works for improvement of slums under section 6;
- (e) power of the prescribed authority to order demolition of buildings unfit for human habitation under section 9;
- (f) power of the State Government, on a report from the Slum Clearance Board, to declare any slum area to be a slum clearance area under section 11 and power of the prescribed authority to redevelop a clearance area under section 15;
- (g) transfer of land to previous occupants under section 16;
- (h) prohibition against eviction of tenants in slum areas without permission of the prescribed authority under section 17;
- (i) restoration of possession of premises vacated by a tenant evicted from a building in a slum area under section 18;
- (j) exemption of buildings belonging to the State Government or Slum Clearance Board or local authority from the prohibition against eviction under section 20;
- (k) offences by companies, for which provision is made in section 51.

8. *Previous occupants under the Gujarat Act*—The Gujarat Act (in the Chapter on Slum Clearance and Redevelopment) contains the following provisions regarding previous occupants:—

“16. *Rules to provide for transfer to previous occupants.*—Subject to the provision of this Act, the State Government may, by rules, provide for or regulate the transfer of persons who immediately before the declaration of any slum area to be a slum clearance area, were occupying lands or buildings in that area to lands or buildings in any other area or to lands or buildings in such slum clearance area after its re-development and the conditions of such transfer.”

9. *Alternative accommodation under the Gujarat Act.*—Notice must also be taken of the fact that in granting permission for eviction of tenants in slum area, the prescribed authority is required to comply with section 17(4) of the Gujarat Act, reading as under :—

“(4) in granting or refusing to grant under sub-section (3), the prescribed authority shall take into account the following factors, namely:—

- (a) whether alternative accommodation within the means of the tenant would be available to him if he were evicted;
- (b) whether the eviction is in the interest of improvement and clearance of the slum area;
- (c) such other factors, if any, as may be prescribed.”

10. *Restoration under the Gujarat Act*—The Gujarat Act in section 18 further contains a provision for the restoration of possession of premises vacated by a tenant, as under :—

18. *Restoration of possession of premises vacated by a tenant.*—(1) Where a tenant in occupation of any building in a slum area vacates any building or is evicted therefrom on the ground that it is required for the purpose of executing any work of improvement or for the purpose of re-erection of the building, the tenant may, within such time as may be prescribed, file a declaration with the prescribed authority that he desires to be replaced in occupation of the building after the completion of the work of improvement or re-erection of the building as the case may be.

(2) On receipt of such declaration, the prescribed authority shall, by order, require the owner of the building to furnish to it, within such time as may be prescribed, the plans of the work of improvement or re-erection of the building and estimates of the cost thereof and such other particulars as may be necessary and shall, on the basis of such plans and estimates and particulars furnished, if any, and having regard to the provisions of sub-section (3) of section 19 and after holding such enquiry as it may think fit, provisionally determine the rent that would be payable by the tenant if he were to be replaced in occupation of the building in pursuance of the declaration made by him under sub-section (1),

(3) The rent provisionally determined under sub-section (2) shall be communicated in the prescribed manner to the tenant and the owner.

(4) If the tenant, after the receipt of such communication, intimates in writing to the prescribed authority within such time as may be prescribed authority within such time as may be prescribed that when he is replaced in occupation of the building in pursuance of the declaration made by him under sub-section (1), he would pay to the owner, until the rent is finally determined under section 19, the rent provisionally determined under sub-section (2), the prescribed authority shall direct the owner to replace the tenant in occupation of the building after completion of the work of improvement or re-erection of the building, as the case may be, and the owner shall be bound to comply with such direction."

11. *Madhya Pradesh Act*—The Madhya Pradesh Slum Improvement (Acquisition of Land) Act, 1956 mainly provides, by section 3, for power to acquire land more or less on the same lines as the Andhra Pradesh Act. A/2. The rest of the Act in Madhya Pradesh contains connected provisions.

12. *Maharashtra Act, 1971*—(i) Under the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (Act No. XXVIII of 1971) the competent authority, upon report from any of its officers or other information in its possession, may declare in regard to any area that the buildings in that area are unfit for human habitation by reason of dilapidations, overcrowding, faulty arrangement and design of such buildings, narrowness of faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to safety, health or morals.

(ii) Chapter 3 of the Maharashtra Act provides for slum improvement. On satisfaction of the competent authority, that authority may issue a notice to the owner of the building for the execution of the work of improvement. If the owner fails to do so, the competent authority can undertake the work of improvement and recover all expenses with interest from the owner as arrears of land revenue. However, under section 6, where the owner has not in his hands sufficient money to satisfy the whole demand of the competent authority, his liability shall be limited to the total amount of the money which he has in his hands.

(iii) Where the competent authority is satisfied that any building in a slum area is unfit for human habitation and is capable, at a reasonable expense, of being rendered so fit, the competent authority may order demolition of the said building after following the prescribed procedure.

(iv) Chapter 4 of the Maharashtra Act is concerned with slum clearance and redevelopment. Under section 11, the competent authority has power to declare any building unfit for human habitation or dangerous or injurious to health, through wide publicity in the prescribed manner.

The competent authority may also require such buildings to be vacated within the stipulated period, after the confirmation of the order by the Administrator. Under section 12, the Administrator may either confirm the order in whole or subject to such variation as he considers necessary; or reject the order. Any person aggrieved by the order of the Administrator may, within six weeks of the publication of the notice, prefer an appeal to the Tribunal constituted under the Act, and the decision of the Tribunal shall be final.

(v) Chapter 5 of the Maharashtra Act deals with the acquisition of land. Under section 14, the State Government may acquire the land of slum areas, after paying the compensation as laid down in the Act. The basis for determination of the compensation will be an amount equal to 60 times of net average monthly income actually derived from such land during the period of the 5 consecutive years immediately preceding the date of publication of the notice. As per section 19, the competent authority, on behalf of the State Government, shall tender payment of compensation to the person entitled thereto.

(vi) Chapter 6 of the Maharashtra Act provides for the protection of tenants in slum areas from eviction. According to section 22, no proceeding for eviction should be taken except with the previous permission in writing of the competent authority. An appeal lies to the Tribunal in certain cases. The decision of the Tribunal shall be final.

(vii) Section 24 of the Maharashtra Act provides for restoration of premises to the tenants. Where a tenant vacates any building, or is evicted therefrom on the ground that the building is required for the purpose of re-erection of the building, the tenant may, within such time as may be prescribed, file a declaration with the competent authority to the effect that he desires to be replaced in occupation of the building after the re-erection of the building. On receipt of such declaration, the competent authority may ask the owner to furnish the plans of re-erection of the building and an estimate of the cost thereof. Under section 25 of the Maharashtra Act, the rent after re-erection shall be determined in accordance with the section.

(viii) Chapter 7 of the Maharashtra Act contains miscellaneous provisions like powers relating to entry and inspection of the building. Further the competent authority has power to remove offensive or dangerous trade from slum areas.

#### LEGISLATION RELATING TO SLUMS

13. *The Punjab Act*—The Punjab Slum Areas (Improvement and Clearance Act (24 of 1961) provides for the following important matters :—

- (a) declaration of certain areas as slum areas by the competent authority under section 3;
- (b) power of the competent authority to require the improvement of buildings unfit for human habitation (sections 4 and 5);
- (c) power of the competent authority to order the demolition of buildings unfit for human habitation (section 7);
- (d) power of the competent authority to declare any area to be a clearance area (section 9);
- (e) power of the State Government to acquire land in order to enable the empowered authority to execute any work of improvement in relation to any building in a slum area or to redevelop any clearance area under section 12;
- (f) prohibition against eviction of tenants in slum areas without permission of the competent authority under section 19, subject to the exception provided by section 21 in respect of the eviction of a tenant from any building in a slum area belonging to the State Government or any local authority.

14. *The U.P. Act*—The U.P. Slum Areas (Improvement and Clearance) Act (18 of 1962) makes the following principal provisions :—

- (a) declaration by the competent authority of the slum areas under section 3;
- (b) power of the competent authority to require the improvement of any building in a slum area which is unfit for human habitation or any land in that area which requires any work of improvement, under section 4;
- (c) power of the competent authority to order the demolition of any building within a slum area which is unfit for human habitation under section 8;
- (d) power of the competent authority to declare any slum area to be a clearance area under section 10 and to redevelop the area under section 15;
- (e) power of the State Government to acquire land or building in a slum area or in a clearance area for certain purposes under section 17;
- (f) prohibition against eviction of tenants in slum areas without permission of the competent authority under section 23 (there does not appear to be any exception for Government buildings) ; and
- (g) Power of the State Government to notify any trade as offensive or abnoxious to the health etc. of the persons residing in a slum area, followed by the power of the competent authority to direct removal of such trade etc. under section 27.

15. *Tamil Nadu Slum Areas (Improvement and Clearance Act, 1971)* The Tamil Nadu Act of 1971 relating to slums makes the following main provisions :—

- (a) declaration by the State Government of slum areas under section 3;
- (b) registration of buildings in slum areas under section 4, which must be read with section 5, empowering the prescribed authority to direct that no person shall erect a building in a slum area without its previous permission ;

- (c) power of the prescribed authority to require execution of works of improvement in a slum area under section 6;
- (d) power of the prescribed authority to order demolition of buildings unfit for human habitation under section 9;
- (e) power of the Government to declare any slum area to be a slum clearance area under section 11;
- (f) power of the prescribed authority to redevelop a slum area under section 15;
- (g) transfer to previous occupants—section 16;
- (h) power of the State Government to acquire land in a slum area for improvement etc. under section 17;
- (i) prohibition against eviction of tenants in a slum area without the permission of the prescribed authority (A/3) under section 29;
- (j) restoration of possession of premises vacated by a tenant as provided (A/4) in section 31;
- (k) exemption of buildings belonging to Government or Slum Clearance Board or local authority from the prohibition against eviction of tenants—section 33.

#### 16. Rehabilitation under Tamil Nadu Act

(a) Certain other provisions of the Tamil Nadu Act are of interest in connection with rehabilitation. Thus, section 16, which occurs in the chapter on slum clearance and redevelopment, provides as under :—

“16. Rules to provide for transfer to previous occupants.—Subject to the provisions of this Act, the Government may, by rules, provide for or regulate the transfer, to persons who, immediately before the declaration of any slum area to be a slum clearance area, were occupying lands or buildings in that area of lands or buildings in such slum clearance area after its redevelopment and the conditions of such transfer.”

(b) Besides this, it may be worthwhile quoting section 29(4), Tamil Nadu Act. As mentioned above, A/5 there is a prohibition against the eviction of tenants in slum areas without the previous permission of the prescribed authority. The grant or refusal of such permission is ordered under section 29(3). Section 29(4) provides as under in the Tamil Nadu Act.—

“(4) In granting or refusing to grant permission under sub-section (3), the prescribed authority shall take into account the following factors, namely—

- (a) whether alternative accommodation within the means of ‘the tenant’ would be available to him if he were evicted;
- (b) whether the eviction is in the interest of improvement and clearance of ‘the slum area’;
- (c) such other factors, if any, as may be prescribed.

17. Restoration under Tamil Nadu Act—Section 31 of the Tamil Nadu Act, which occurs in the same Chapter provides for protection of tenants in slum areas from eviction, reads as under :—

“31. Restoration of possession of premises vacated by a tenant—(1) Where a tenant in occupation of any building in a slum area vacates any building or is evicted therefrom on the ground that it was required for the purposes of executing any work of improvement or for the purpose of re-erection of the building, the tenant may, within such time as may be prescribed, file a declaration with the prescribed authority that he desires to be replaced in occupation of the building after the completion of the work of improvement or re-erection of the building, as the case may be.

(2) On receipt of such declaration, the prescribed authority shall, by order, require the owner of the building to furnish to it within such time



as may be prescribed, the plans of the work of improvement or re-erection of the building and estimates of the cost thereof and such other particulars as may be necessary and shall, on the basis of such plans and estimates and particulars, if any, furnished and having regard to the provisions of sub-section (3) of section 32 and after holding such enquiry as it may think fit, provisionally determine the rent that would be payable by the tenant if he were to be replaced in occupation of the building in pursuance of the declaration made by him under sub-section (1).

(3) The rent provisionally determined under sub-section (2) shall be communicated in the prescribed manner to the tenant and the owner.

(4) If the tenant, after the receipt of such communication, intimates in writing to the prescribed authority within such time as may be prescribed that when he is replaced in occupation of the building in pursuance of the declaration made by him under sub-section (1), he would pay to the owner, until the rent is finally determined under section 32, the rent provisionally determined under sub-section (2), the prescribed authority shall direct the owner to place the tenant in occupation of the building after the completion of the work of improvement or re-erection of the building, as the case may be, and the owner shall be bound to comply with such direction."

18. *West Bengal Act*—The West Bengal Slum Areas (Improvement and Clearance) Act, 1972 contains the usual provisions regarding prohibition against erection of new structures in slums, improvement schemes, slum clearance and redevelopment and acquisition of land in a slum area. The Act extends to the whole of West Bengal except the areas declared as Cantonments under the Cantonments Act, 1924.

19. *Illegal occupation*—It would appear that Central and State enactments relating to slum improvement and clearance do not give a conditional or un conditional right to alternative accommodation to those slum dwellers who have *illegally occupied* the premises in question. Such protection against eviction as is conferred by these enactments, is confined to "tenants", i.e. persons who are presumed to have some title to their present occupation of the premises by virtue of a lease.

20. *Need for local authorities to carry out their obligation*—There is some discussion in one of the papers included in the report of the National Commission on Urbanisation, A/6 about the need on the part of the local authorities to carry out their obligation regarding urban development. In this paper, the following recommendations (so far as is material to the point under consideration) have been made :—

"6.7.2. It would be preferable to enact a special act (as was done for the urban land ceiling act) by Parliament with a provision that the provisions shall be implemented either by the States or be entrusted to the Municipal Corporations. The transfer of a share of municipal revenue (it need not be limited to property tax only) supplemented by a grant from the State Government should form an Account from which normal municipal service, as listed in Municipal act as duties and functions) and economic and welfare functions—all economy to be properly listed as detailed in the various chapters of this report should be undertaken.

(i) The new enactment can be termed—An Act to provide for the provisions of civic, economic, developmental and welfare services to the urban poor.

The definitions must include a specification of :

- (i) Urban poor;
- (ii) Economic Functions;
- (iii) Welfare Services;
- (iv) Civic Services.

(ii) The Act should provide that each State/Municipal Body should provide in the building bye-laws or development control rules, special provision to govern the schemes of :

- (i) Sites and Services and Construction thereon;
- (ii) Low Income Group Housing/Poor Class Housing;"

No such law seems to have been enacted.

*References*

- A/1. *Jyoti Pershad v Administrator for the Union Territory of Delhi*, AIR 1961 S.C. 1602 : (1962) 2 S.C.R. 125.
- A/2. Para 5 *supra*.
- A/3. Para 16(b) *infra*.
- A/4. Para 17 *infra*.
- A/5. Para 15(i) *supra*.
- A/6. All India Institute of Local Self Government, Bombay, paper included in N.C.U. Report (August, 1988), Vol. V Part II, pages 187, 188, paragraph 6.7.2.