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In the Public's Interest:
Evictions, Citizenship and Inequality in Contemporary Delhi

by

Gautam Bhan

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in

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University of California, Berkeley

Committee in charge:

Professor Ananya Roy, Chair
Professor Teresa Caldeira
Professor James Holston

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Abstract

In the Public's Interest: Evictions, Citizenship and Inequality in Contemporary Delhi

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Millennial Delhi is a city whose landscape has been scarred by a series of evictions of the homes of some of its most vulnerable citizens. These evictions are different not just in degree but in kind from those that have come before. Evictions at this scale last occurred in Delhi during what is known as the Emergency from 1975-77 when democratic and fundamental rights were suspended. Unlike evictions within the Emergency, however, contemporary evictions have occurred through democratic processes rather than in their absence– they mark a different set of negotiations, legitimations, processes as well as horizons of resistance. A further factor makes contemporary evictions distinct: they were ordered not by the *sarkar* –the institutions of the executive across local, state and federal scales that govern the national capital – but by the *adalat*, the Judiciary. They were, in fact, ordered by the Delhi High Court and the Supreme Court of India within a unique judicial innovation in India called the Public Interest Litigation that had been established, ironically, to enable the poor to access justice in the highest courts of the land.

To understand how the evictions of the poor can be read as acts in the "public interest," this dissertation argues that we must first locate the *basti* in the particularity of the production of space in Delhi. The Hindustani word "basti" comes from *basna* which means to settle or inhabit. It is the term used most often by the poor to describe their homes that are often marked by some measure of physical, economic, and infrastructural vulnerability. The *basti* is often reduced to the slum, a marker of illegal occupation of land and, more broadly, the dysfunctional landscape of the megacities of the global South. Yet this dissertation argues that more than just a 'slum,' built environment, material housing stock, or planning category, a *basti* is, in fact, a territorialisation of a political engagement within which the poor negotiate their presence in as well as right to the city. It is a spatial manifestation of the negotiations of citizenship. Its eviction then represents not just the demolition of a built environment but the transformation of precisely this political engagement– an erasure of the poor's presence within and right to the city. Put another way, contemporary evictions represent an altered urban politics where a set of familiar referents– development,

order, governance, citizens, and the public– are redefined to not only enable evictions but also to see them as acts of good governance, order and planning.

Read this way, evictions allow us to access the central theoretical and ethical concern of this dissertation: the politics of the production and reproduction of poverty and inequality in the contemporary Indian city and the negotiations of citizenship that underlie it. Broadly, this dissertation argues that evictions make visible make visible a *juridicalisation of politics* in the Indian city. This juridicalisation is marked by the emergence of new frameworks, discourses and practices in urban politics that instantiate themselves in the city through the judiciary rather within the more familiar institutional compacts between institutions of representative government and urban residents. The juridicalisation of politics marks the expansion of the jurisdiction not just of the courts but also of the realm of the law within urban politics. As the sphere of authority of the Courts widens in the city, a series of questions, concerns, interventions, processes and debates within urban politics come to be come to seen, articulated, and addressed as juridical questions – they speak and are spoken about within the frameworks of law.

Following its concern with the politics of poverty, inequality and citizenship, the dissertation traces juridicalisation along one particular vector: it shows how evictions were made to make "legal sense" within public interest litigations. Four key frameworks thus emerge: (a) planned illegalities; (b) planned development and/as crisis; (b) the impoverishment of poverty; and (c) the juridicalisation of resistance.

The dissertation first constructs a spatial history of inhabitation in the city to challenge the assumed relationships between "illegality," planning and the settlements of the poor, arguing that the "illegal" production of urban space in Delhi comprises not just the 'slum' but the production of illegal housing by the middle and upper middle classes as well. It does so by problematizing the familiar and commonsensical narrative of the "failure of planning" in the Indian city and showing that the *traces of planning* ensure that the city may not be as it was planned but it is an outcome of planning. It argues that illegality is the dominant mode of the production of housing in Delhi and that it is within illegalities that the production of urban space in the city must be understood. Questions of urban politics must thus look not at the dichotomy of the legal-illegal but instead at the ways in which planning and planned development produce illegality. Equally, they must interrogate the processes by which particular kinds of urban practices and actors are framed as "illegal" relative to others and what work such a framing is meant to do.

Having established the relationship between illegality, planning and planned development in the city empirically, the dissertation then analyses a body of case law in the Delhi High Court and the Supreme Court of India to show that the Courts misrecognise illegality in their twin understandings of "encroachment" and "encroacher" when they portray the former as the visible manifestation of what they see as the crisis of the city and the latter as one of the actors primarily responsible for this crisis. Showing how the courts use narratives of the failure of "planned development" and what they call "Government" to justify their interventions into the city, the dissertation describes their attempt to make the city into a governable space using the "Plan in its legal position" to represent an idealized spatial order. Intervening in the crisis of the city towards this idealized order thus becomes

not only the primary definition of public interest but also an ethico-moral imperative that acts as a rationality of judicial government.

Further, the dissertation argues that the case-law on evictions makes visible the *impoverishment of poverty*, drawing upon Upendra Baxi's concept of impoverishment as a dynamic process of public decision-making in which it is considered just, right and fair that some people may become or stay impoverished. The Courts enable impoverishment by through the creation of the category of the "encroacher" that binds the identity of the poor to a spatial illegality and becomes the basis of a disavowal of their rights. Additionally, through the discursive erasure of the vulnerability of the poor and the emergence of a new "urban majority" as the subject of urban politics, they transform the poor into improper citizens thereby legitimizing a regime of differentiated citizenship.

Using interviews with activists in urban social movements in Delhi, the dissertation further shows how the emergence of the judiciary as the site and object of resistance has resulted in the *juridicalisation of resistance:* the impact of the presence of the Court within the calculus of negotiation and confrontation as modes of engagement and resistance to evictions. The presence of the Court challenges the choice of strategies of urban social movements, introduces new actors and decision-making processes into movement spaces, alters the content of right-claims and forecloses certain kinds of claimants just as it shapes the political identity and history of *basti* and its residents themselves. Finally, in conclusion, the dissertation explores how new forms and claims to the city can emerge in response to these challenges that will be not just impassioned, but equitable and effective.

For Delhi, For Dilli.

हमने माना डक्कन में हैं,

बहुत से क़द्र-ए-सुखन,

पर कौन जाए, ए ज़ौक,

ये दिल्ली की गलियाँ छोड़कर।

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Acknowledgments

To my sister, Shereen, my brother Abhishek, and my sister Sonam: I stand on your shoulders in all that I do. Finally, to my parents who are my oldest, wisest and greatest teachers: I cannot thank you enough for teaching me to care, to fight, to seek what is just and right, to reach beyond the possible and to want to change the world. Without that, what else would there be?

Introduction

"How did we get here?"

Rafiya Khanum sticks in your mind. Of slight built and boundless energy, she is endlessly on the move— her hands seem unable to stop themselves. As we talk, she cleans, stirs a pot of rice, strings another bead into a necklace she will sell to a supplier and watches her sleeping son. From the corner of her eye, she keeps anxiously glancing upward to check the distance between my head and the ceiling fan, rightly afraid that if I stretch my hands too far upward I'd meet a rotating blade. "You're too tall for this house," she says to me, laughing. "But then, who isn't?"[1]

She and I are seated on the mud floor of her ten-foot-by-twelve-foot thatch, tin and mud hut in Bawana, a 'resettlement colony' on the northwestern periphery of New Delhi. Bawana was created to house families evicted from the place Rafiya still calls home – a string of *bastis*[2] that housed 30,000 households (nearly 150,000 people) by the River Yamuna in the northeast of the city. The *bastis* were colloquially just called 'Pushta,' or riverbank. Between February and April, 2004, in a series of operations involving hundreds of armed policemen, Pushta was demolished [see Figure 1a and 1b]. Less than 25% of evicted households received any form of resettlement or rehabilitation. Rafiya was one of the luckier ones.

A notice had appeared in the *basti* two weeks before the evictions began. The notice was not from any of the institutions of the executive, i.e. the city's planning agencies, any of its multiple urban authorities, public utilities or the state or central governments that Rafiya had voted into power and which jointly rule the National Capital Territory of Delhi – what, in other words, Rafiya referred to as the '*sarkar.*[3]' The notice, she said, was from the *adalat* – the Court. "I didn't even know there was a case against us!" she said to me. "In fact, I still don't know if there was one, or what it was." The notice and the eviction at Pushta was indeed the implementation of an order of the Delhi High Court. There wasn't just a single case, however; the order was issued in hearings on a group of petitions being adjudicated together by the Court. Though they raised multiple issues, each of these cases had one important thing in common: they were, without exception, Public Interest Litigations (*hereafter* PIL; PILs in plural).

Public Interest Litigation is an innovative judicial mechanism established by the Indian judiciary in the late 1970s explicitly to protect the fundamental rights of the poor. Its founding purpose was to enable the poor and marginalised to access justice in the highest courts of the land through significantly eased legal procedures and rules of standing. Through PILs, the Supreme Court aimed to become, as one of its own judges argued, "the

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[1] Personal Interview, dated 11.02.2010.
[2] The Hindi/Urdu word *basti* (related to *basna*, to settle) means settlement. Colloquially, it is the word most commonly used by residents of urban poor settlements to describe their homes and hence it is the word used throughout this dissertation. Colloquially, *bastis* are understood to represent settlements typically marked by some measure of physical, economic and social vulnerability. It is these settlements that are often called "slums." Within planning paradigms in Delhi, however, a "slum" refers specifically to a settlement designated as such under the 1956 Slum Areas Act. I use the word 'slum' only to either refer to this specific planning category or to report its use in English when necessary. In relation to planning, *bastis* cover three types of settlements: Slum Designated Areas, Resettlement Colonies and JJ Clusters. See Chapter One for a detailed discussion of these categories.
[3] *Sarkar* is often translated as "government" or even the "state" but, in this dissertation, I will argue and use it explicitly as the institutions of the executive.

last resort for the bewildered and the oppressed"[4] who could approach the court to protect the infringement of their constitutionally guaranteed fundamental rights. In some of the earliest PILs, the Supreme Court treated even a simple letter written directly to it as a legal petition and took upon itself the task of fact-finding and the gathering as well as framing of evidence and legal arguments.[5] Through the 1980s, PILs were indeed the sites of an expansion of rights for the poor in what Upendra Baxi described as no less than a "re-democratizing of the processes of governance and the practices of politics" (Baxi 1997: 351). PILs were seen as filling a democratic vacuum as the "Supreme Court *of* India" became a "Supreme Court *for* Indians" in what Baxi called "chemotherapy for the carcinogenic body politic" (Baxi 2002: xvi). The Court was seen as a site where rights— particularly the rights to life (Article 21), equality (Article 14), anti-discrimination (Article 15), and freedom of expression (Article 19) – were interpreted, expanded and enforced.

In March of 2003, however, a two-judge bench of the Delhi High Court told a different story. The judges lamented that the river Yamuna "which is a major source of water has been polluted like never before. [The] Yamuna bed on both the sides of the river has been encroached by unscrupulous persons with the connivance of authorities." It had, they argued, "to be cleared of such encroachments immediately." Arguing that "the citizens of Delhi are silent spectators to this state of affairs," they ended their orders with a direction to all the institutions of the *sarkar* –"the Delhi Development Authority, the Municipal Corporation of Delhi, the Public Works Department, the Delhi Jal Board,[6] as well as the Central Government" – to "remove encroachments up to 300m from both sides of River Yamuna in the first instance. No encroachment either in the form of *jhuggi-jhopri* clusters[7] or in any other manner by any person or organization shall be permitted." [8]

Unlike in previous evictions, this clearance was explicitly delinked from resettlement, i.e. the provision of an alternative dwelling or plot of land to evicted households. "Under the garb of resettlement," the judges argued, "encroachers are paid a premium for further encroachment." The Court's ire against resettlement was part of a broader critique of urban development in Delhi *per se*. In previous orders in the same case, they had argued that, "the whole concept of urbanized development of land in Delhi has almost collapsed as a consequence of such haphazard development and irrational policies. Any person can sit wherever he wants. Squatting on the land gives a right to get another allotment which allotment also he sells and after selling comes back on the same land. The policy itself gets defeated." While agreeing that, "it was the duty of the government to provide shelter for the underprivileged," the judges argued that "[the government's] lack of planning and initiative" cannot "be replaced by an arbitrary system of providing alternative sites and land to encroachers on public land." [9]

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[4] Justice Beg in State of Rajasthan & Ors v Union of India (1977) AIR 1361.
[5] Letters to the Supreme Court were indeed treated as PILs in Sunil Batra v Delhi Administration (1980) 3 SCC 480, Dr Upendra Baxi v State of UP (1983) 2 SCC 308, Veena Sethi vs State of Bihar (1982) 2 SCC 583, PUDR vs Union of India (1982) SCC 253, Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 161 and Nav Kiran Singh v. State of Punjab (1995) 4 SCC 591; among many others.
[6] The Delhi Water Board.
[7] See footnote 2.
[8] Orders of March 3rd, 2003 in Okhla Factory Owner's Association v. Government of National Capital Territory of Delhi CWP 4441 of 1994 and Wazirpur Bartan Nirmata Sangh vs Union of India CWP 2112 of 2002.
[9] Order of November 29th, 2002. Supra, fn. 8.

Figure 1a: Yamuna Pushta, 2003

Figure 1b: Yamuna Pushta, 2005

Outside the courtroom, the state and central governments remained silent as the Slum and JJ Department of the Municipal Corporation of Delhi began the process of eviction. Activists and Pushta residents scrambled to respond. Some tried to mobilize their elected representatives – the night before demolitions, local *pradhans*[10] claimed, in fact, that a deal had been struck and demolitions would not occur.[11] They were wrong. An emergency appeal filed in the Supreme Court by activists and Pushta residents to get a temporary injunction on the Delhi High Court's orders was summarily dismissed. A large public protest at the offices of the Delhi Development Authority by members of Sajha Manch – a coalition of nearly forty organizations, *basti* associations and unions – was followed by another outside the residence of the then-President APJ Abdul Kalam by nearly 500 children asking that the evictions at least be postponed until after their school year exams. Both failed to illicit even an acknowledgment from the *sarkar*. In the weeks before and after the evictions, digital renderings of a rumored riverside promenade to be built in place of the settlements as well as a grand design for the entire Yamuna riverbank began to appear in city newspapers. The evictions themselves and the lack of any resettlement options for those displaced got little coverage. In a matter of months, the land was cleared.

You can, and often have to, tell this story another way. Both Rafiya and Pushta are also data points. Between 2002 and 2010, a series of evictions reduced the total number of *bastis* in Delhi by the largest margin since sweeping evictions during the Emergency in 1975-77, the "dark hour" of Indian democracy where fundamental rights stood suspended and political dissent was either censored or swiftly punished (see Figure 2). Millennial Delhi is a city whose landscape has been scarred by repeated, frequent and seemingly inevitable evictions of the homes of its poorest residents. Unlike evictions within the Emergency, however, contemporary evictions have occurred through democratic processes rather than in their absence.

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[10] *Pradhans* are unofficial but recognized leaders of *basti* councils and generally seen as the political leaders of thecommunity though no clear formal or institutional process exists for their appointment or election.
[11] Interview with Kalyani Menon-Sen, member of the Stop Evictions campaign. See also Chapter Four.

Figure Two: Number of *Bastis*/'Slums' in Delhi 1951-2010
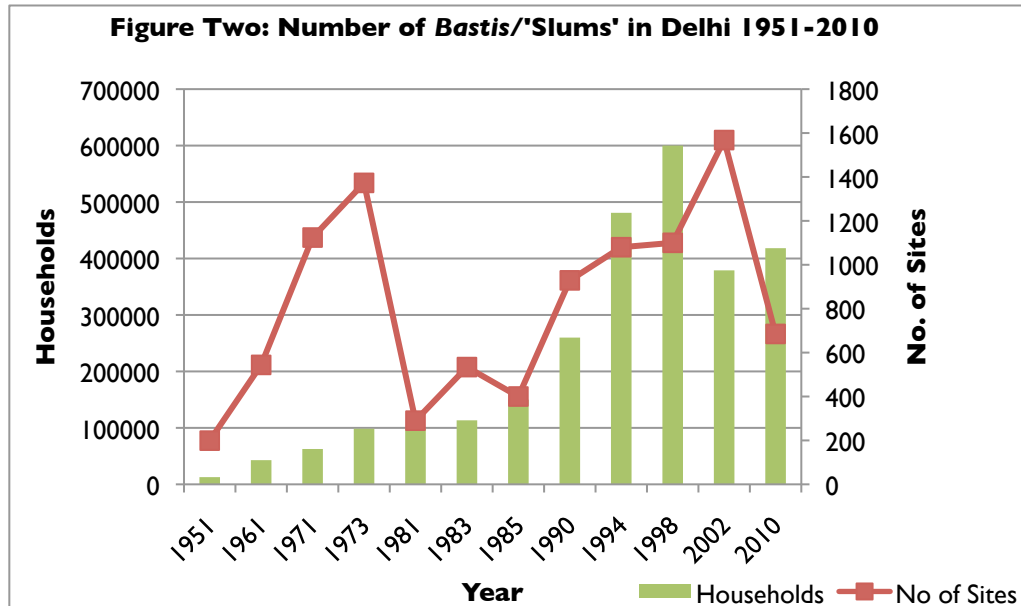
Source: Combined, unpublished lists from Food and Civil Supplies Department, Municipal Corporation of Delhi, Delhi Urban Shelter Improvement Board and Delhi Economic Survey 2009-2010. Copies on file.

Taken together, these evictions have reversed nearly two decades of the steady, incremental growth of *bastis* in the city. In the slow rise of the graph's red line between 1981 and 2000, many like Rafiya were born, educated and came of age in *bastis* like Pushta*,* Nangla Machi, Himmatpuri, Trilokpuri, Banuwal Nagar, Sanjay camp, Sanjay *basti* and Ambedkar Colony. These *bastis* grew as the city did – Master Plans and changing elected governments notwithstanding. None of them stand today. Each was evicted through the orders of the Delhi High Court or the Supreme Court of India.

What Rafiya experienced as an act of violence, displacement and the disavowal of her rights, the Delhi High Court argued was an act in the public interest – an act of governance, urban development and order. How did the Judges determine that the eviction of vast numbers of urban poor citizens was within the "public interest," ruling against their claims to shelter? *Bastis* are not covert – Pushta stretched nearly a kilometer in the heart of the city and had been in existence for nearly thirty years. Its existence was not a matter of stealth. How then did it suddenly become both necessary and possible to read its presence as a violation that must be erased? How did this occur through a judicial innovation created precisely to be the "last resort for the bewildered and the oppressed"? "How," as Rafiya once asked me, "did we get here?"

What is an Eviction?

At its simplest, an archetypical *basti* is a settlement that houses the urban poor and reflects in its built environment some measure of their impoverishment. Characterized by relatively poor environmental services, it consists of houses often built of what are considered "temporary" or *kuccha* (literally, "raw") materials like thatch, bamboo and plastic or tarpaulin sheets though a significant number may just as well be made in brick and concrete, particularly in older *bastis*. Master Plans as well as municipal and other laws variously consider *bastis* as "informal" or "illegal" because they are built in violation

of planning norms and standards through the occupation and settlement of public or private land that *basti* residents do not own in title. In Delhi, in part due to a historic public land acquisition move known as the "Delhi Experiment,"[12] almost all *bastis* are on public land. The *basti* is inescapably a claim to the use public land, to shelter as a public good and to housing the poor as act within the public interest.

Rafiya was aware that she did not "own" the land her house in Pushta was built on. She did, however, feel like she had a claim to it. It was empty swamp land, she argued – "it was poor people like my father who put bricks and sand and made it strong enough to take the weight of a hut. Who else is public land meant for but the public? Where else am I meant to go?" Her arguments are familiar ones. The poor occupy land both out of need and right, implicitly and explicitly pointing out the state's failure to provide adequate low-income housing and its continuing responsibility to provide for the poor, one way or another. In claiming the right to the *basti,* Rafiya is exercising what James Holston has described as a mix of "text-based, special interest and contributor rights" (Holston 2008)— claims, as I shall argue, of citizenship, no matter how fragile.

These claims are inextricably and simultaneously also claims to development. "The developmental ideology," Partha Chatterjee reminds us, "was a constituent part of the self-definition of the post-colonial state." The state's claim to legitimate rule was based not just on electoral representation but also on the promise of development, on "directing a program of economic development on behalf of the nation." It was through this framing of development as the "universal goal of the nation" that the post-colonial state broke with colonialism (Chatterjee 1997: 277). India's developmental story has always been seen and assessed as a national one – the city has, until recently, played an ambiguous role in the politics of a country that "lives in its villages" as Jawahar Lal Nehru once famously put it. Yet in the two decades after the Emergency in Delhi, the slow rise of the red line of the graph in whose shadow Rafiya was born represents precisely the management of the promise of development in the Indian city, particularly for its poorest residents.

This management is evident in the life of the *basti* itself. In Rafiya's lifetime, electricity, schools, and water connections came to Pushta, all provided by the local government usually after significant struggle by *basti* residents and often in implicit and explicit exchange for electoral support. Internal streets were paved over, temples and mosques built. Pushta residents had built a paper trail of their lives – they had Voter Identification cards, entitlement cards to the local food distribution centre, utility bills with their names and addresses on them. They existed (and invested a great deal in existing) on paper – a feat often immensely difficult for the urban poor in Indian cities.

Incremental service provision and formal, documented existence were seen by *basti* residents as a series of steps on a ladder to legitimacy and legality, and rightly so. In 2000, only 24% of Delhi's population lived in what the Master Plan called "planned

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[12] In 1959, the Government of Delhi acquired nearly 39,000 acres of land in the heart of the city, including already built up areas as well as enough land as planners believed would be needed to account for the city's expansion till 1980. The aim of this acquisition was, in line with the Delhi's first Master Plan issued in1962, to enable state control over land to ensure equitable development. See Chapter One for a detailed discussion.

colonies." Nearly 13% of the city lived in *bastis,* many of which, like Pushta, had existed for decades. Another 13% lived in what are called "resettlement colonies," i.e. settlements that housed families that once lived in *bastis* before they were displaced and given a plot of land with some measure of legitimacy and security of tenure. Twenty six percent of the city's population, therefore, either lived in *bastis* that the state implicitly allowed (and often explicitly provided services to) or in settlements where they had been given an alternate plot of land after being evicted. In 1978 when Rafiya's father, Jamal, moved to Delhi from his village in West Bengal via Bombay, he was thus right to expect that if he survived long enough in Pushta, he would either gain services and make a life in the *basti* or be given a post-eviction resettlement site. Eventually, incrementally, he would become increasingly legitimate.

The *basti* is thus not just the materiality of housing, a spatial form or a planning category. It must be read instead as the territorialisation of a political engagement within which the poor negotiate their presence in as well as right to the city. This engagement is complex. It is based on a mix of political, ethical and moral claims that draw upon on both rights and needs. It is an engagement with (but not limited to) the institutions of the *sarkar* that often involves their implicit and explicit patronage and, at times, even their active participation. It works through as well as despite the law and regimes and practices of planning. It takes just as often the form of resistance and opposition— through, for example, vigorous social movements resisting eviction or pursuing greater legitimacy and security of tenure— as it does the more institutionalised forms of state-citizen relations such as the ballot. It constructs and attributes meaning and value to urban space through symbolic and discursive practices, telling its own narrative of both the city and the *basti* within it. It is, in other words, a negotiation of citizenship if we see the latter not "just as a legal status" but as the "the moral and performative dimensions of membership which define the meanings and practices of belonging in society" (Holston and Appadurai 1999: 4-5).

An eviction therefore does not just demolish the built environment of a *basti* – it marks the transformation of precisely this political engagement. Determined within a juridical determination of the "public interest," contemporary evictions represent an altered urban politics where a set of familiar referents– development, order, governance, citizens, and the public– are redefined to not only enable evictions but also to see them as acts of good governance, order and planning. They signal a shift in the "developmental ideology" as it re-articulates through the 'urban turn' – the political, economic and cultural emergence of the city in contemporary India (Prakash 2002). They are a rupture in the dominant pattern of urban inhabitation for the poor in Delhi as well as of the implicit and explicit claims that underlie this incremental and negotiated inhabitation. They represent a shift in negotiations of citizenship, particularly for the poor and their claims to and presence within the city. They make visible the democratic management of differentiation and inequality in the contemporary Indian city.

Read this way, evictions allow us to access the central theoretical concern of this dissertation: *the politics of the production and reproduction of poverty and inequality in the contemporary Indian city and the negotiations of citizenship that underlie it.* At stake in studying evictions then is to understand the new and emergent forms, technologies and

rationalities of this politics and to ask, in turn, what these forms tell us about contemporary Indian urbanism at a moment of immense political, economic and social transformation.

This dissertation does so by focusing on an emergent site of this politics: the judiciary. Contemporary evictions mark the judiciary as a critical site of the (re)production of urban inequality, one with its own institutions, processes, and rationalities. Within and outside the courtroom, evictions are made possible within a *juridicalisation of politics*: the emergence of new frameworks, discourses and practices in urban politics that instantiate themselves in the city through the judiciary rather than the *sarkar*, i.e. the institutional compacts between institutions of the executive and urban residents. The juridicalisation of politics marks the expansion of the jurisdiction of the courts as well as of the realm of the law within urban politics. As the sphere of authority of the Courts widens in the city, a series of questions, concerns, interventions, processes and debates within urban politics come to be come to seen, articulated, and addressed as juridical questions – they speak and are spoken about within the frameworks of law.[13]

These frameworks are constituted and formed within a particular set of rationalities— what one senior lawyer once described to me as "legal sense" – that constitute what scholars have termed "the juridical register" which Khanna describes as the field constituted by the "logics of law, 'rights', and formal claims to citizenship" (Khanna 2012).[14] These frameworks literally and discursively shape the city just as they are shaped by it. They impact the production of urban space, particularly through mediating practices of governance, policy and planning. As they travel from the Courtroom to the city in the form of media reports, orders, directions and judgments, they become, argues Ravi Sundaram, an "ordinary archive of the city," altering and shaping its discursive landscapes and the terrain of social struggles over space and citizenship (Sundaram 2009).

Evictions are only one marker of the juridicalisation of politics in contemporary Delhi. PIL decisions emerging from the courts have been responsible for many of the major changes to the city's urban systems since the mid-1990s: the closure and relocation of "hazardous" industries beyond city limits;[15] the conversion of all public transport and private commercial transport to the use of compressed natural gas;[16] decisions on municipal solid waste disposal;[17] the "sealing" of unauthorized commercial units in residential neighborhoods in violation of the city master plan;[18] and, most recently, the

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[13] Writing on the politics of the judiciary has often used the term "judicialisation," particularly within writing on Latin America where a majority of this literature is based (see Domingo 2004, Sieder, Schjolden and Angell 2005, Holston 2009, Couso, Huneeus and Sieder 2010). Though the terms are not in disagreement with each other, I use juridicalisation precisely because I argue that in the Indian case the political question at hand is an expansion of the role of an already politicized judiciary and hence an expansion of its jurisdiction rather than, for example, Holston's argument about how the Brazillian judiciary becomes politicized in an environment of recent democratization through the actions of insurgent citizens.

[14] Khanna is writing about the queer movement in India and what he calls its "entry into the juridical register" as queer people seek to become "intelligible as legitimate subjects of the Law" by filing a PIL against an archaic 1861 anti-sodomy law.

[15] MC Mehta v Union of India, CWP 4677 of 1985

[16] MC Mehta v Union of India, CWP 13029 of 1985

[17] Almitra Patel vs. Union of India, CWP 888 of 1996

[18] Kalyan Sanstha Social Welfare Organisation v Union of India & Ors CWP 4582 of 2003

cancellation of a number of residential developments in peri-urban Delhi by nullifying the process of land acquisition of previously agricultural land from farmers.[19] Contemporary Delhi is a city shaped by judicial decisions taken in the public interest in what has been described as an era of 'judicial activism,' 'judicial adventurism' as well as 'judicial governance.'[20] Understanding the logics at play within the courtroom, therefore, is an essential part of both understanding contemporary urbanism in Delhi as well as assessing the nature of democratic politics in the city.

Following its particular concern with the politics of poverty, inequality and citizenship, this dissertation traces the juridicalisation of politics along one particular vector— it shows how evictions were made to make "legal sense" within public interest litigations. To do so, it describes four key frameworks within the juridicalisation of politics, each of which forms one of the main chapters of the dissertation itself, that emerge from twenty four PILs in the Delhi High Court and the Supreme Court of India that resulted in evictions. These frameworks are: (a) planned illegalities; (b) planned development and/as crisis; (b) the impoverishment of poverty; and (c) the juridicalisation of resistance. I briefly layout these frameworks below.

THE JURIDICALISATION OF POLITICS: FOUR EMERGENT FRAMEWORKS

Planned Illegalities

In urban theory, the narrative of "informality" has been a particular marker in theorizing cities of the global South, particularly "megacities" that are "big but not powerful" (Robinson 2006) and beset by "problems." In this depiction, the informal has been one of the key drivers of the "dysfunctional landscapes of Southern cities" (Rao 2006) that are seen as the result of the "the dominance of informal, unplanned urban growth" (Swamy, Bhaskara Rao et al. 2008).

Until recently, the bias in urban theory has been to see informality more as "a domain of survival by the poor and marginalized" (Roy 2008: 2). In this reading, it is often quickly reduced to the "slum." The slum then is read as a "demographic and territorial form" that is the "spatial manifestation of the informal proletariat that has emerged from over a decade of structural adjustments"(Davis 2006: 28). It is the "distorted substance" that changes the "urban into a dysfunctional stage for violence, conflict and the iniquitous

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[19] Initial orders of this cancellation have just begun to be reported in the media at the time of writing. See http://articles.timesofindia.indiatimes.com/2011-07-07/india/29746406_1_builders-land-acquisition-shahberi-village. Accessed 19th April, 2012.

[20] See Muralidhar 1998 and Muralidhar and Desai 2000 for a broad history of PILs and governance; Sathe 2002 remains a definitive volume on judicial activism; Baxi 1997, Baxi 2002 remain excellent inquiries into the appropriate separation of powers; Rajamani 2007 and Sharan (2002, 2006, 2010) focus on debates on the role of the judiciary within the environment. Remarks by Supreme Court judges themselves on "judicial activism" circulate widely in their own right and are reported in the media. For example, the speech of former Chief Justice of India K. G. Balakrishnan entitled "Judicial Activism in India" (available at http://supremecourtofindia.nic.in/speeches/speeches_2009/judicial_activism_tcd_dublin_14-10-09.pdf) or the remarks of another former Chief Justice JS Verma written as an editorial in the Times of India, India's leading English-language daily (available at http://articles.timesofindia.indiatimes.com/2007-12-19/edit-page/27990858_1_judicial-activism-judicial-activism-pils; accessed April 20th, 2012).

distribution of resources" (Rao 2006: 231). It is that out of the reach of the state and of modernization, that which stubbornly refuses to "bow out" of modernity's way (Nandy 1998).

Roy (2005) makes a different argument. She argues that urban informality is not, in fact, a "bounded" space or sector at all, but a type of governance. She understands it as the state's ability to suspend order, to "decide what is informal and what is not, to determine which forms of informality will thrive and which will disappear" (Roy 2005: 182). This is a "new spatial vocabulary of control, governance and territorial flexibility" (Roy 2003: 157), a mode of the production of space. In her more recent work, she refines her analysis, rejecting "the designation of extra-legality" because "that terminology implies that informality is a system that runs parallel to the formal and the legal. Yet, the formal and the legal are perhaps better understood as fictions, as moments of fixture in otherwise volatile, ambiguous, and uncertain systems of planning" (Roy 2009: 81).

Evictions and the juridicalisation of politics challenge these narratives of both the production and perception of space. In Chapter One of the dissertation, I argue that it is within illegalities rather than within the false binaries of formal/informal and legal/illegal that the production of space in Delhi, and indeed in cities of the South more broadly, must be understood. I do so through historicizing the history of inhabitation in Delhi in order to situate and locate the *basti* amidst a broader history of housing in the city. Through this history, I argue that the "formal" and the "legal" are, in fact, far from "fictions" in the production of space in contemporary Delhi.

I use as a starting point a set of categories – specifically, settlement typologies – shown below in Table One. In an environment where data is hard to get and even harder to verify, this Table appears and re-appears with remarkable consistency across the policy landscape in Delhi. The Delhi Economic Survey (2008-10) shares it with the City Development Plan, the Master Plan of Delhi 2021 the Delhi Urban Environment and Infrastructure Improvement Report 2021 and it is used extensively both academically as well as by social movements.[21]

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[21] See Government of Delhi 2006, Delhi Development Authority 2007.

Table 1: Settlements in Delhi		
Type of Settlement	**Est. Population in 2000 ('000s)**	**Percentage of Total Population of City**
JJ Clusters	20.72	14.8%
Slum Designated Areas	26.64	19.1
Unauthorized Colonies	7.4	5.3
JJ Resettlement Colonies	17.76	12.7
Rural Villages	7.4	5.3
Regularized-Unauthorized Colonies	17.76	12.7
Urban Villages	8.88	6.4
Planned Colonies	33.08	23.7
Total	139.64	100
Source: Statement 14.4 of the Delhi Economic Survey 2008-09 (Government of Delhi, 2009).		

Though its data dates back to 2000, the Table is still the most (and indeed the only) cited set of statistics on the types and relative quantum of housing in the city. It is then both an empiric and an artifact – used as much as for its representation and categories of enumeration as for its numerics. Its categories are the terms used to speak about housing in the city – by the courts, planners within the Delhi Development Authority, the city and central governments, the municipal authorities, the media and by city residents themselves. Even a bare glance at the Table indicates a peculiar fact – only 23.7% of the city lives in what are called "planned colonies." What then does that tell us about the "unplanned," "illegal" and "informal?" To answer this question, I visualize – as far as it is accurately possible to do so using a series of geo-spatial maps – where housing within these categories of any legal status was built in Delhi from the issuance of the first Master Plan in 1962 to the present moment and shows how this history of inhabitation relates to the city's three Master Plans. I spatialize, in other words, each of the categories of the table. I then use this data to assess how these categories themselves are constructed— their definitional principles, in-built exclusions and their application in everyday life.

I draw two conclusions. First, I show that "unplanned" growth is not the domain of the poor or the slum. If the "dysfunctional landscapes of Southern cities" are indeed caused by the "dominance of informal, unplanned growth," as Rao argues, then this dysfunction must take into account not just the 'slum' but the production of illegal housing by the middle and upper middle classes as well. In fact, the data reminds us that illegal construction of housing is, in fact, the dominant mode of production of housing and shelter in the city. The reduction of urban dysfunction to the 'slum' in policy, everyday discourse as well as within urban and planning theory, I argue, has played a key role

political and intellectual role that is, in David Harvey's use of the term, "counter-revolutionary" – it not only asks the wrong question, it prevents the real question from being asked (Harvey 1973).

I suggest then a different field of inquiry – if illegality is indeed the dominant mode of production of urban housing as the data suggests, then we must understand and account for the differentiated implications of various illegalities when exercised by different urban actors. This reframing insists that analyses of urban politics be relational, looking at the ways in which particular kinds of urban practices and actors are framed as "illegal" relative to others and what work such a framing is meant to do. Rather than legal/illegal or formal/informal, I suggest the idea of *legitimacy*. Legitimate housing or settlements can be legal or illegal, formal or informal, and are often a complex mixture of all of the above in one way or another. What defines them is their resilience against the threat of arbitrary eviction through either a *de facto* or *de jure* security of tenure that need not, and often does not, derive from inclusion with the Plan. Legitimacy allows us to explore how different settlements inhabit the city within illegalities, rather than create false separations between porous categories. The negotiations of citizenship define the relationship between the legitimate and the legal: how do some illegalities result in the loss of legitimacy, while others do not? How is legitimacy gained or lost by different urban residents – through what claims, tactics, locations and strategies? How is tenure secured legitimately rather than legally?

Second, I show that it is planning itself that produces and regulates illegality. I show how practices of planning determine which settlements will be legal and which illegal, which will thrive and which will not be allowed to exist. The production and regulation of illegality is thus part of, and not outside, what we understand as planning. Planning then is indeed a technique of rule, what Roy calls a "a spatial mode of governance" where the state exercises a 'calculated informality,' to decide "decide what is informal and what is not, to determine which forms of informality will thrive and which will disappear" (Roy 2005: 182). Yet this ability to be discretionary and 'calculated' has limits. This is particularly true when different institutions within the "state" choose to exercise competing discretions within the city. Contrary to what Roy argues, within the courtroom, the "formal and the legal," are perhaps not better understood as "fictions" – they take concrete, juridical form that is based on the categories and stipulations of the "plan in its legal position." It is the juridical translation of the Plan, planning and the idea of 'planned development' that is the focus of the second chapter.

Planned Development and/as Crisis

In Chapter Two, I locate myself within debates on 'judicial governance' in the 1990s and 2000s.[22] I argue that evictions are a privileged site through which to assess broader juridical efforts to make the city into what Nikolas Rose calls a "governable space" (Rose 1999). Using a Foucauldian analytics of government, I show that the courts are a site of the production of new governmental rationalities based on altered understandings of a familiar set of concepts –the "city", "public," "inequality", "slum,"

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[22] Supra, fn 20.

"governance" and "development" – through the introduction and privileging of others: "encroachment," "planned development," "crisis" and "order." These rationalities emerge within the construction of a particular understanding of the city as a site of crisis marked and caused by the failure of, on the one hand, what the Courts repeatedly call "planned development" and, on the other, of "Government."

How do we understand the crisis *of*, *in*, and even *as* the city? Within the case law on evictions, the crisis of the city is repeatedly defined as a failure – pressing, immediate, and urgent – of what the Courts call "planned development." This failure, they argue, is the primary question of public interest, one that forecloses other claims, narratives and contestations. What is this "failure"? Two intertwined elements form the answer. The first is what the Courts term as 'encroachment': the 'illegal' and 'unauthorised' occupation of land, unauthorized construction in individual building units, and the violation of permitted land use, especially within residential colonies. The most visible symptom of the failure of planned development, encroachment is what separates the complexities of the real city from the imagination of the planned city – it is the multiple disjunctures between the city and its plan. The Courts perform a particular reading of these disjunctures— one that marks them as scars, gaps to be filled, violations that must be undone.

Vyjayanthi Rao has argued that in thinking about "slum as theory," one must challenge the reduction of the "slum" to a "spatial and demographic form" by thinking instead of it more as a construct that "straddles the conceptual and material forms of city-making" (2006: 231). Both the "slum" and "encroachment" perform the work of city-making within the Court. When the Court argues that the failure of planned development through encroachment turns the city into a "slum," it creates the slum as a shorthand of what Rao calls "the distortion of urban substance" – of all that is not planned, not orderly and, therefore, neither legitimate nor desirable. The problem that the slum represents then shifts. It no longer represents the vulnerability of its residents. It no longer marks poverty. It no longer marks the history of a failure to build adequate low-income housing. Its residents, their lives and histories, stand reconfigured and reduced to the land the settlement sits on, the zone it occupies in the plan, and the colour of that zone on the Master Plan. From a *basti*, it becomes a slum – something whose erasure is an act of "good governance," of order, and of public interest.

The second part of the crisis of the city is the failure of what the Courts call the "Government," i.e. the world of policy, institutions of representative and electoral politics, and statutory public bodies including city utilities, municipal authorities, and developmental authorities. The failure, in other words, of the *sarkar* to manage and control the city and protect it against the threat and reality of encroachment. This failure allows the Court to position itself as a powerful urban actor, legitimizing its interventions within the city and its attempts to actively subject the executive to its power. In fact, this subjection becomes framed as inevitable and necessary precisely because of the Court's portrayal of an inefficient, corrupt and unreliable "Government." This shift marks a clear break from PILs in the 1980s where, as scholars have noted, the Courts may have held the "Government" responsible for failing to do its duty but they saw their own role as being limited to the determination of this failure. Redressal and

further response remained the responsibility of executive authorities— the work of policies and programmes, the work of "Government."

The crisis of the city – visibilised by encroachment and understood as the failure of planned development and "Government" – legitimizes juridical urban interventions. The need to address these intertwined failures, to restore order, and to intervene in the idiom and temporality of crisis becomes not only the primary meaning of public interest but also an ethico-moral imperative, what Rose might term the moral form of the rationality of judicial government. This imperative reads juridical action and the rule of law itself as an act of restoring order and governance to a city in crisis. It is not coincidental that, as they order evictions, the Courts argue that, "no city, no democracy can survive without law and order. Public interest requires the promotion of law and order, not its degeneration and decay."[23] Yet even if the Courts see themselves a legitimate urban actors and create a governmental rationality that allows them to intervene into the city, what is the basis by which the Court decides what to do? If encroachment is the anti-thesis of Planned Development, what is the latter meant to be?

To govern, argues Nikolas Rose, it is necessary to "render visible the space over which government is to be exercised" (1999: 36). Acts of mapping, drawing, scaling and rendering visual, therefore, are particular acts that spatialize government. Within case law on evictions, the Court privileges a particular representation of the city: the three Delhi Master Plans – 1962, 2001 and 2021 – transformed into what the Courts call as "the plan in its legal position." How does the Court use a document produced by the one of the authorities of the very "Government" that it accused of failure? What does it mean for the plan, an instrument of policy, to act as "law"? What is, in other words, the "legal position" of the Plan?

In its legal position, the Plan's boundaries both create and bind the city as a governable space. It spatializes governmental thought. Its categories of land use and ownership – in their visual, literal, two-dimensional allocations –reduce the complexity of the city to a neat binary of all that *does* or *does not* ally with the Plan at any given point of time. It becomes the framework, in other words, of the legal and the illegal rather than the legitimate. The 'legal position' of the Plan is what James Scott describes as a "simplification" – a "synoptic view" that uses a "narrowness of a field of vision" to impart a logic on reality as it is observed. Simplifications, he argues, "collapse or ignore distinctions that might otherwise be relevant." They reduce an "exceptionally complex and poorly understood set of relations and processes" to "a single element of instrumental value" (Scott 1998: 77). The Plan as seen by the Court is reduced to the spatial order it represents – a two-dimensional system of classification of land use. Perhaps more importantly, it is simplified to what this spatial order represents within the crisis of planned development in the city: a legible, enforceable sense of order. The Court, Ravi Sundaram has argued, seeks the "the phantasm of control" typified in Delhi's very first Master Plan and its vision of the city as an urban machine whose parts,

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[23] Pitampura Sudhar Samiti vs. Government of the National Capital Territory of Delhi CWP 4215 of 1995

movements and intentions could be controlled by the techno-modernist Master Planner (Sundaram 2009).

The Plan stands both as law and as ideal, the singular basis of the Court's intervention into the city. It becomes the benchmark of how the city must be ruled in order to escape the crises of infrastructural decay, the breakdown of order, the lack of housing, increasing migration and the proliferation of 'slums.' Within the Court, an ordinary land-use plan becomes a mark of a spatial, aesthetic, social and political urban order that must be attained. The implementation of the Plan becomes not just the mechanism of government but its rationality, a defining component of public interest. As it does so, it impacts not just governance, but conceptions and practices of citizenship and rights – the subjects of the third framework.

The Impoverishment of Poverty

Citizenship, Etienne Balibar has argued, is a concept "as old as politics itself" (Balibar 1988: 723). Indeed, since the 18th century, argue James Holston and Arjun Appadurai, two linked concepts have been "the defining marks of modernity" in the establishment of "the meaning of full membership in society" – citizenship and nationality (1996: 187). The nation-state – with its attendant promises of freedom, equality and sovereignty – is the particular form of the modern state that has been the dominant site of the instantiation of citizenship, where "the universal ideals of modern citizenship were expected to be realized" (Chatterjee, 2004: 30).

Within the democratic nation-state, in particular, the identity of the citizen is meant to supersede all others. It is this move "from particularity to universality" that is seen as a "critical aspect of democratization." It is also what allows citizenship to bear the possibility of a politics of equality and justice. The three elements of "citizenship, rights and justice," argues Menon, are intertwined in the context of a modern democracy. The citizen – unmarked by other identities in a form Menon describes as the "abstract" or "unmarked" citizen – carries the potential of justice through the "winning, granting and protecting" of rights, precisely because such unmarking that allows the individual to be part of a modern public sphere as a rights-bearing citizen (Menon 1998: PE3). This is why, Balibar argues, the dimension of equality – with "all the problems of definition it poses and the mystifications it may conceal" – is always present in the constitution of a concept of citizenship (Balibar 1988: 723).

While centrally concerned with the question of equality and inequality and its relationship with conceptions and practices of citizenship, this dissertation is located within a particular contemporary shift in thinking about citizenship: from the nation to the city. Arguing that, "formal membership in the nation-state is increasingly neither a necessary nor a sufficient condition for substantive citizenship," Holston suggests instead that it is cities that are "especially privileged sites for considering the current renegotiations of citizenship" (Holston 1999: 168). Holston and Appadurai argue, in particular, that, "in many postcolonial societies, a new generation has arisen to create urban cultures severed from the colonial memories and nationalist fictions on which independence and subsequent rule were founded" (1999: 3). Appadurai, in writing about movements of the urban poor in Mumbai, has argued that these movements represent a

"deep democracy," a new horizon of urban politics that constitutes "governmentality from below" and represents efforts to "reconstitute citizenship in cities" (Appadurai 2002: 24). Holston, writing about citizenship claims to and through rights to the city in the peripheries of Sao Paulo, sees the city through the possibility of insurgence: "of a counter-politics that destabilizes the dominant regime of citizenship, renders it vulnerable, and defamiliarizes the coherence with which it usually presents itself to us" (Holston, 2009). He gives us a compelling definition of what he calls an *urban citizenship*:

> "… where urban residence is the basis for mobilization, rights claims addressing the urban experience compose their agenda, the city is the primary community of reference for these developments, and residents legitimate this agenda of rights and participatory practices on the basis of their contributions to the city itself" (Holston, 2008: 23).

It is important to remember here that Holston does not argue for what he calls "insurgent citizenship" as a necessarily 'progressive' or 'egalitarian' space. Citizenship as "a means of organizing society," he argues, has always been "both subversive and reactionary, inclusionary and exclusionary, a project of equalization and one of maintaining inequality" (Holston 2008: 21). Contemporary evictions in Delhi mark precisely a moment in which urban citizenship is inegalitarian and differentiated, where the disjuncture between formal and substantive citizenship has seemingly deepened. They seem to mark a limit of "deep democracy" and "insurgent citizenship," and pose new challenges for conceptions to the right to the city, or perhaps mark the beginning of a new site and register of struggle. The third chapter of the dissertation thus asks: what were the "diverse discourses of rights" articulated within the courtroom in PILs that led to evictions? How were the claims of the poor to shelter and the *basti* understood and responded to within the Court? How were evictions ordered despite these right-claims?

Upendra Baxi has argued that, "people are not naturally poor, but are made poor." Baxi argues that "poverty" and the "poor" are passive words that invisibilise the processes by which poverty is produced and reproduced. He argues instead for a perspective based on "impoverishment" – "a dynamic process of public decision-making in which it is considered just, right and fair that some people may become or stay impoverished" (Baxi 1988). Drawing on Baxi's notion of "impoverishment," I analyze case law on evictions to show that they make visible at least three processes of impoverishment: (a) new languages of rights and city-centric claims to belonging and citizenship that are used pre-dominantly by the elite rather than the poor; (b) the production of the poor as "improper citizens"[24] through the creation of the category of the "encroacher" that binds their identity to a spatial illegality and becomes the basis of a disavowal of rights; and, finally, (c) the discursive erasure of the vulnerability of the poor and the emergence of a new "urban majority" as the subject of urban politics. It is this impoverishment that both enables evictions in the name of public interest just as it is reproduced through them.

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[24] This term draws and plays upon Chatterjee (2004)'s notion of "proper citizens."

Within case law on eviction, the Courts refer repeatedly not just to encroachment but also to "the encroacher" – an actor responsible for producing the encroachment through squatting and occupying public land. I show that the "encroacher" is more than just the actor responsible for the encroachment. She is instead the personification of the very sense of violation and illegality that encroachment represents for the Court. It is this personification that then acts as the basis for the legitimate disavowal of her rights. The term "encroacher," Ramanathan reminds us, is "loaded with illegality" (Ramanathan 2004). Yet I take Ramanathan's argument further: the use of the term "encroacher" reduces the personhood and identity of the poor to a singular, particular form of spatial illegality. A single *act* of occupation, in other words, is translated into the *identity* of the *basti* resident, foreclosing any other claims of identification and ensuring the Courts "cannot forget" that *basti* residents are encroachers. As an identity, "encroacher" performs exactly the same function as "citizen" – it supersedes other claims and sites of belonging. It becomes the primary and often the only identity of the poor. As the personification and embodiment of illegality, the encroacher is unworthy of rights. She cannot posses what Chatterjee calls, "the moral connotation of sharing in the sovereignty of the state" implied within citizenship (2004: 136). It is the construction of the "encroacher" that enables the democratic management and reproduction of inequality – it is the basis for a differentiated citizenship where formally equal citizens can publicly, legally and defensibly be treated unequally. The reproduction of these structures and logics of differentiation is thus at the heart of the relationship between democracy, citizenship and inequality. It is also a constitutive part of the urbanism of contemporary cities of the South. Understanding the ways in which regimes of differentiated citizenship implicate the city and the production of space within them are narratives of contemporary urbanism in cities marked by relatively greater degrees of inequality.

Processes of impoverishment made visible in instances of eviction both originate and extend beyond them. The "citizen," the "encroacher" and the idea of "encroachment" travel. They are produced and reproduced between the courtroom and the city, institutionalized in juridical verdicts in the name of public interest just as they are made evident in new imaginations of the urban economy, in the emergence of aesthetic regimes of the poverty and the city itself, and in the discourses and institutionalized policy directives on 'citizen participation.' More than just the impoverishment of specific populations of the poor that reside in *bastis,* therefore, they are part of a larger shift in the politics of poverty in urban India and the reduction of the efficacy of poverty as the basis of a political claim to rights, entitlements and, indeed, to citizenship itself. I term this shift the *impoverishment of poverty.* By looking at process of impoverishment both within and outside the courtroom, I define the impoverishment of poverty as being composed of three definitive trends: (a) the displacement of the poor from the developmental ideology and the "imagined economy" (Deshpande, 1993) that marked the welfare state as it has re-articulated at the scale of the city; (b) an altered representation of the poor through an erasure of their vulnerability amidst a broader criminalisation that legitimizes a disavowal of their substantive rights; and (c) the emergence of an elite insurgent urban citizenship that challenges the efficacy of poverty as a political claim within the determination and distribution of rights, needs and entitlements.

The Juridicalisation of Resistance

The third framework and the final chapter of the dissertation then shifts our focus from the court's rulings to the residents and activists of the *bastis* themselves, particularly to residents of JJ Clusters facing evictions. It asks: how did social movements react to and resist evictions? What were the sites and forms of their struggle? What strategies did they employ and what claims to rights, relief or resources were embedded within these strategies? Particularly, it asks: how, if at all, did the fact that these evictions were ordered by the Delhi High Court and the Supreme Court of India rather than the *sarkar*?

This framework lies within the faultlines between a Lefebvrian conception of the right to the city and what Zerah *et al* describe as rights in the city – a "reformist" take on the right to the city that argues that a bundle of rights that can be obtained "only by engaging with the institutions of the developmental state" (Zerah, Lama-Rewal et al. 2012: 2). The Right to the City, Lefebvre argued, was "the right to *oeuvre* (the city as a work of art), to participation and to appropriation (clearly distinct from the right to property)" as a claim to the city (Lefebvre 2002 [1968]). In recent and influential work, James Holston (2008; 2009 among others) suggests that it has not been, as Lefebvre expected, the working classes of the cities of the North Atlantic that brought about the right to the city. The "foundations of this right," argue Holston, "moved south, so to speak" (2009: 247). For Holston, it is within the contemporary moment of extraordinary urbanism in cities of the South that the right to the city finds some realization. It is precisely in the "peripheries of these cities," he argues, "that residents organize movements of insurgent citizenship to confront the entrenched regimes of citizen inequality that the urban centers use to segregate them" (2009: 245).

"Not all peripheries, of course," concedes Holston, "are insurgent" (2009: 245). Susan Parnell and Edgar Pieterse, in fact, argue that the "notions of urban citizenship have been little applied to the fundamental development questions of how cities of the South might be imagined or governed"— a lacuna made apparent by "the absence of an articulated rights-based agenda for cities of the South" though they mark Brazil as a strong exception (Parnell and Pieterse 2010: 148). For them, the challenge of using rights-based approaches amidst an urbanisation of poverty underscores a the need for a different political practice: an engagement with the "state" and the "downscaling" of "the developmental state to the city scale" especially in the "large cities of the South" (2010: 146).

Parnell and Pieterse argue that socio-economic rights require "bringing the state back into development debates" (2010: 153). They are writing against what they see as the marginalisation of the state as a development actor through the undifferentiated charge of "neoliberalism." Their understanding of the nature of engagement with the state deserves close attention. They argue that:

> "citizen action that relies exclusively on an oppositional logic or a political stance of perpetual resistance is unlikely to achieve reforms in the mundane functioning of the state, which we have shown from the Cape Town experience to be a precondition for cumulative changes that can transform the political economy of opportunity and provide institutional access to resources" (2010: 158).

This tension, or perhaps more accurately this calculus, between negotiation and confrontation as modes of engagement and the relationship of this calculus to rights to and in the city is at the heart of this chapter. This calculus became evident in Indian cities in 2005 in Mumbai when the city witnessed a series of brutal evictions of informal settlements and pavement dwellers that displaced nearly 300,000 people. The Alliance – the network of SPARC, the National Slum Dwellers Federation and Mahila Milan written about extensively as a new form of "deep democracy" and resistance to dispossession and urban evictions (see Appadurai 2002; Patel, D'Cruz et al. 2002; Burra, Patel et al. 2003)– famously and to much public criticism did not mount a campaign of public resistance. It said instead that, "our experiences in the past and the outlook of the poor communities that we work with have propelled us to eschew the path of righteous indignation and protest" (Mitlin and Patel 2005: 3-4). They argued that:

> we have learnt from these communities that the only way, at present, that the poor get housing entitlements regardless of international covenants and national policies is to survive the evictions and demolitions until such time that the state concedes and enacts first, protective legislation, and, later, legal entitlements. However irrational this might sound, this is the real insight into the process – the subtext to the on-going war of attrition between the poor and the state (2005: 2-3).

Ananya Roy has argued that this "politics of patience" (Appadurai 2002) can also be read as a "politics of compensation" that creates a "distinctive political subjectivity" ((Appadurai 2002; Roy 2009). This politics, she argues, is steeped in the "morality of collaboration, participation and mediation. To protest, to confront, is to stand outside the parameters of citizenship" (2009: 173). When seen from the perspective of urban social movements within settlements facing eviction, how do we understand this calculus between negotiation and confrontation? In the context of evictions, we must ask further: what spaces of political engagement can exist in a context of repeated and gross violations? Do evictions, in other words, mark a limit, or frontier, of engagement? Conversely, do they symbolize its failure? What do evictions tell us about the (im)possibilities of insurgence?

Drawing upon a series of interviews conducted with activists who are members of urban social movements resisting evictions in Delhi from the late 1990s, I argue that existing fault lines within urban social movements on choosing between (or simultaneously using) multiple strategies of resistance are further complicated when the object of resistance is the Court rather than the executive. Already complex divisions on axes of gender, class and vulnerability continue to play out in the decision of how to resist a court ordered-eviction even as activists additionally struggle with the belief that a court order cannot be contested at all, on the one hand, or arguing that it is not a site where the poor can and should voice their demands, on the other.

Strategies of resistance are further compromised as the right and obligation to contest the executive or *sarkar* is contrasted with the sense among activists that they don't have a right to fight the Court. This sense is strongly rooted in a sense of distance from the Court – both in the literal barriers to access as well as the symbolic distance in the imagination of the social and political position of the Court in the lives of residents of JJ Clusters. This sense of distance is constituted in part by the role played by lawyers as

both interlocutors but also symbols of the barriers to entry within the legal process. It also manifests itself in the very composition of right-claims that are made by and on behalf of the those facing eviction. Rights in their "legal sense" are bound by the limits of arguments that lawyers believe the Court will recognize as legitimate. Arguments made by residents in movements spaces – particularly those challenging the cut-off dates and questioning the public purpose for which *basti* land is required – therefore cannot be "legally sensible" though they form a core of right-claims outside the Courtroom.

I argue that court-ordered evictions alter the forms, claims, sites and strategies of urban social movements in advocating for the rights and citizenship of those facing the threat of eviction. Specifically, the emergence of the Court shapes the choice of strategies used by urban social movements, introduces new actors and decision-making processes into movement spaces, alters the content of rights claims and forecloses certain kinds of claimants just as it shapes the political identity, narratives and history of *bastis* and *basti* residents themselves. It is this that I term the *juridicalisation of resistance.*

ON METHODS AND ARCHIVES: THE VIEW FROM THE *BASTI*

> The cities of which we are citizens are cities in which we want to intervene, build, reform, criticize and transform. We cannot leave them untouched, implicit, unspoken about (Caldeira 2000: 8).

My fieldwork started several years before I began my research for this dissertation. I am both a native and citizen of Delhi— it is my place of origin as well as where I legally, morally, emotionally and culturally belong. I discovered the *bastis* of my own city through their eviction. For many years, I was a part of anti-eviction social movements, present both in the street and the courtroom, trying to resist. When Pushta was evicted, I followed families like Rafiya's to Bawana. For two years, I led a local research team in a study to quantify the impact of resettlement on these families. The research became a book and an annexure in multiple court challenges to evictions as evidence of what we had described as the "permanent poverty" of the resettlement colony (Bhan and Menon-Sen 2008). Evictions had angered, hurt and horrified me. I went to Bawana seeking something: an outlet, some absolution, some answers. Those years changed the *basti* for me. An object of inquiry became an ordinary, everyday place. Its vulnerability was obvious. As time passed, so was its resilience. As more time passed, neither became the defining trope of the *basti* for me – the "slum" had left my imagination both as space of hope and a space of despair. I was now, I felt, finally ready to understand it on its own terms. The first thing I learnt to do was to stop looking at the *basti*, but rather look from it. In a sense, this dissertation represents that moment.

The study of the periphery in contemporary urban theory is too often just that: an attempt to explain what occurs at the periphery, looked at, inevitably, from the gaze of those who live outside it. My intention here is not to debate the politics of either representation or location. It is instead to suggest a new kind of native informant: the elite, organic intellectual who uses the periphery as a site to study his own locations: the academy and planning theory, the authority and institutions of planning practice as well as himself. I use the term periphery not as a spatial category but as locational marker for conceptual inquiry. Let me put it simply: to look at the *basti* from within planning theory

or practice, for example, is to tell a tale of exception. To look at planning from the *basti* is to tell a tale of the fiction of the rule. Peripheries both allow and compel us to ask different questions– the task for our inquiries is to take these questions and construct bodies of theory from and with them.

This dissertation is, in its essence, an ethnography of inequality. It is so because questions of the democratic management and (re)production of inequality are arguably the most pressing questions that the *basti* asks of the city— that it asked of me in the years I spent within it. The task of research is then an explicitly political exercise: to build a theory of the inequality and the city from the periphery, reflecting its priorities and concerns and to take these concerns to the academy, the government, the public and the city to hold them answerable. The ethnographer is then native informant and Trojan horse, seeking to unravel the "foundationalist fictions" of the presumed centres of power from within.

My research thus began with trying, quite literally, to find the evicted *basti*. How does one search for the site of a settlement that no longer exists? Over a period of two months in October and November, 2010, a team of research assistants and I head out everyday into the city searching for absences. Armed with a list of eviction sites with very approximate geographical locations, we reached neighborhoods and then began to ask residents if they remembered a *basti* that once stood somewhere in the area. Rickshaw pullers, street vendors, labourers and taxi drivers, we quickly realized, were the best informants. Their memories were amazingly clear: they knew sites, names, the number of households and where the evicted bastis had been resettled, allowing us to verify official lists and find the locations of *bastis* to geo-code onto maps. Searching for evictions, I realized that there were two cities everywhere we went – one that still stood, and one whose memory still marked local narratives of space.

As I created the map of evictions, I began to see the patterns that I present in Chapter One. The evictions clustered in the centre of the city – leaving large white spaces that seemed implausible. I plotted existing bastis next that made another pattern emerge. Unauthorised colonies, resettlement colonies, regularized colonies – one by one I mapped all the housing typologies that defined Delhi's built environment, provoked by the pattern that evictions had thrown up. The *basti* did indeed provoke its own questions, allowing me to rebuild the city from within it, and reconstruct planning in the city in doing so.

The evictions then led me to the courts. I knew of Pushta and Nangla Machi as two court-ordered evictions. Curiosity took me to the Court to find the original petitions that resulted in the order for evictions. I realized then that the orders that led to the evictions at Pushta were given in a clustered litigation that brought no less than 63 different PILs together. That first petition led me to another, and then another. The primary archive that this dissertation draws upon is now a set of 24 PILs filed in the Delhi High Court and the Supreme Court of India that led directly to evictions. I accessed copies of the lead original petitions, interim orders, court transcripts and committee reports filed in the process of hearing. I focused on the *dicta,* the text of the Judges' verdicts where they outlined their reason and the logics of their determination

of rights and the public interest. As the judgments were reported in the media, I followed them, seeing how the Judges' words travelled through the city.

The last part of the fieldwork was, in many ways, the most difficult. In seeking to understand resistance to evictions, I turned back to open-ended interviews with activists in urban social movements, and particularly, to key figures in a coalition of individuals, *basti* associations, organizations and unions called Sajha Manch. They were all, without exception, friends and colleagues. They were used to researchers but not to one of their own. Interviewing them felt, at times, like questioning myself, voicing out loud many of my own doubts about our strategies and campaigns together. At times, I struggled to keep myself out of the conversation as I believed I should. Halfway through my first set of interviews, I decided to stop trying. I traded interviews for conversations, offering my own reflections but marking the conversations that I led and those that came unaided. In writing transcripts of the interviews, I sorted and contextualized each statement and attempted to indicate this contextualization. I still do not fully know how far I succeeded.

How did we get here?

Contemporary evictions capture a moment in which rights are lost, where citizenship is inegalitarian and differentiated, the promise of development is refused, and poverty and inequality are reproduced and deepened. For any effective conceptualization and realization of a just city, we must understand this moment in all its particularities, continuities and discontinuities from both previous claims to inhabitation as well as experiences of eviction. The task at hand then is not just to explain evictions but also to listen to what they are telling us— about the city that is as well as the city that can be.

Sitting that day on the floor of her house, as I was trying to escape being maimed by the ceiling fan, Rafiya asked me: "How did we get here?" It was a question I had been unable to escape – as a resident of Delhi, as a member of social movements resisting eviction, or as an ethnographer. "Here" as in Bawana where, to me, life seemed nearly impossible either to recreate or start anew though I knew both would happen. "Here" as in a moment where the evictions of nearly a hundred thousand people in a *basti* nearly three decades old occurred seemingly without a ripple in the everyday life of the city – without governments falling, without newspaper headlines, without outrage. "Here" where these same evictions were seen as acts of good governance, planning and public interest. "Here" where social movements seemed to lose both slogans and surety as they struggled to resist. "Here" where a judicial innovation seeking to further access to justice for the poor had become precisely the site of their exclusion. "Here" where neither a claim of poverty nor one to rights seemed sufficient to guarantee a right to the city for the majority of its residents.

Rafiya's question animates, inspires and haunts this dissertation. It also, however, points to its *raison d'etre:* if we do not understand how we got "here," we cannot understand how to leave and, most importantly, how to move "there" – towards a city of inclusion, justice and shelter, even if the latter is made of a small square sheet of thatch, slightly fraying on its sides with a ceiling fan that's uncomfortably close to your head.

Chapter One

Planned Illegalities:
The Production of Housing in Delhi 1947-2010

The City was not planned as it is, but the City is an outcome of planning.[25]

In a room full of luminaries on a spring day in Delhi, the city searches, yet again, for illumination. The workshop is another of what seems like an endless number in the unfolding of the urban agenda in India across the academy, policy and government, private enterprise, as well as in the media. The 'Urban Turn' seems complete.[26] On the masthead this day is the "21st Century Indian City."[27] The lead author of the latest urban manifesto – the High Powered Expert Committee Report on Urban Infrastructure[28] – is the lead panelist of the opening session of the workshop. She speaks eloquently about the need for growth in urban infrastructure and the mechanisms by which these are to be attained. At the end, almost as an afterthought, she sums up one of the reasons why her work was, in a way, "simple." The committee's approach to infrastructure provision, she says, was "obvious" because, "planning, as we all know, has failed in Indian cities."

The 'failure of planning' has become a ubiquitous and commonsensical refrain uniting voices from across sectors, disciplines and ideological positions. In 2006, the Prime Minister inaugurated the Jawahar Lal Nehru Urban Renewal Mission (JNNURM) – India's largest urban program and policy intervention in her history – saying the cities needed to "re-think planning" because "all previous efforts in city planning have been limited by a narrow-focused project approach" that had failed Indian cities.[29] Global analysts McKinsey & Co, authors of a highly influential report on Indian urbanization as well as on Mumbai's urban transformation, root India's "poor state of urban planning" in urban and regional plans that are "esoteric rather than practical, rarely followed and riddled with exemptions."[30] Members of social movements representing the urban poor go further, describing and protesting what some have called the "total bankruptcy and arrogance of the planning process" that has led to a "systemic failure of modern planning" and deep exclusions in Indian cities (D. Roy 2004).

Academic literature on planning in and on India paints a similar picture. Swamy et al begin their book on urban planning in India with a chapter called "Current Crisis – An Overview" (Swamy, Bhaskara Rao et al. 2008). It is apt summation – the crisis is eternal, it merely needs to be updated to be "current." The "current crisis" has echoes through the decades in which institutionalized urban planning has existed in Indian cities. The first concerns were the absence of the city in the national, political imagination. Writing in 1969, KCS Sivaramakrishan remarked that, "two decades after Independence, India cannot be said to have a national housing policy" partly because "any emphasis on the urban, industrial scene is interpreted as unawareness of the problems of the villages" (Sivaramakrishnan 1969). The anti-urban bias persisted through the early 1970s but many, including M.S. Gore, argued that urban planning could work as long as there was "a more positive attitude to urbanization and its role in the developmental strategy"

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[25] Peattie 1987: 15
[26] Prakash 2002
[27] The conference was held in March, 2011, at the India International Centre and titled "Developing an Agenda for Urbanisation in India." See: http://indiancities.berkeley.edu/. Accessed April 14th, 2012.
[28] HPEC 2011
[29] See the full text of the Speech on the JNNURM website here: jnnurm.nic.in. Accessed September 1st, 2011.
[30] McKinsey 2010

(Gore 1975). Yet by the late 1970s itself, this sense of possibility had given way to dismissal as Meera Bapat summarized as the "failure, even irrelevance, of the dominant ideology of urban planning" (Bapat 1983). Decades apart, Ashis Nandy and Jai Sen both described Indian cities as "unintended." For Nandy, entrenched and widespread informality made a mockery of planning's claims to order and control while for Sen, the Unintended City was the city of hybrid practices that refused the narrative of urban development and, critically, the city's escape from the rural (Sen 1976; Nandy 1998).

The planners' desire to "effect a controlled and orderly manipulation of change" has been, argues Baviskar, "continuously thwarted" by the "inherent unruliness of people and places" (Baviskar 2003: 92). A language of crisis and failure had begun to seep in by the mid 1990s to an extent that Gita Dewan Verma's description of the "chaos that is urban development" had become a benign description of a commonly accepted fact (Verma 2002). Urban planning was considered, at best, "hopelessly inadequate" in terms of being able to tackle this chaos (Patel 1997). Inadequacy, however, was the gentlest of the charges against planning. Dunu Roy used the twin jaundice and cholera epidemics in Delhi in1955 and 1988 to argue that the worst aspect of the failure of planning was that, in fact, "planners did not even understand the implications of what they themselves had done" (D. Roy 2004).

Crisis-ridden as well as crisis-inducing, chaotic, irrelevant, incompetent, exclusionary: planning in India indeed does indeed seem to have failed. In Indian cities, this 'failure' has acted as a reason, impetus and justification for a range of diverse urban practices: increasing juridical intervention into urban governance by the higher courts; political action by civil society organizations and resident associations; the emergence of new forms of public-private governance mechanisms within urban reform and policy paradigms as well as trenchant critiques by social movements seeking rights to and in the city. Narratives of 'failure' also critically inform the main subject of this dissertation: the evictions of settlements of the urban poor through juridical orders in the name of public interest. In ordering evictions, the Delhi High Court and the Supreme Court of India frequently used the terms "planning" and "planned development" with an air of familiarity, resting on the assumption that their meaning and representations were both obvious and commonly shared, and, in the same breath, repeated their diagnosis that "planning" and "planned development" had indeed "failed."[31] It is here then that we must begin.

How do we assess the "failure of planning"? Narratives of "failure" are simultaneously narratives of planning. Accusations of chaos, irrelevance, incompetence and exclusion, in other words, each rely upon an imagination of what functional, relevant, competent and inclusionary planning could and should look like within an Indian city. "Failure is," in Ravi Sundaram's words, "a diagnostic of planning" (Sundaram 2009). In this chapter, I take Sundaram seriously. I ask not why planning has failed but instead frame a different inquiry: What is the work done by the idea and discourse of "failure"? What, in other words, does the idea of "failure" itself make possible within and as "planning"?

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[31] See Chapter 2 in particular.

In what follows, I assess planning by problematizing, in the Foucauldian sense, the certainty of its "failure." Foucault argued that, "for an object to enter into the field of thought, it is necessary that a certain number of factors have made it uncertain, have made it lose its familiarity, or have produced around it a certain number of difficulties." It is necessary for it, in other words, to be "problematized" (Foucault 1994 [1984]: 114). The task of the analyst then is not to assess this problematization in order to explain it by "revealing a hidden and suppressed contradiction" behind it as in, for example, Marxist critical thought. Instead, it is precisely to "address that which has already become problematic" (Rabinow and Rose 2003: 12) so that we may unearth "what has made possible the transformations of the difficulties and obstacles into a general problem for which one proposes diverse practical solutions" (Foucault 1994 [1984]: 117). In other words, the task at hand is to take the "failure of planning" and see it not "as 'a given' which generates problems that must be resolved" but instead "as 'a question' whose formation and obviousness must itself be subject to analysis" [1994 (1984): 117]. In other words, our task is to ask: How have diverse sets of actors come to agree, seemingly without exception, on the 'failure of planning'? What comprises these diverse understandings of "failure"? What do these "failures," in turn, tell us about the apparently self-evident understandings of plans, 'planning' and 'planned development' in Delhi?

The Histories and Categories of Inhabitation

I problematize "failure" within a specific aspect of urban development— the production of housing and shelter in the city. Within housing, I further focus on the processes by which the poor inhabit and settle in the city. My questions thus become narrower and more specific: what is the relationship between planning, the nature of its single or multiple 'failures,' and the production of housing in the city, particularly for the urban poor? How does planning impact the ability of the poor to inhabit the city? How does it, in particular, relate to conceptions of illegality and informality that have been closely associated both with the presence of the urban poor in the city as well as with narratives of the failure of planning? What, in other words, does planning tell us about the "slum"?

How does one assess something as broad as "housing" in a city? In the chapter on "Urban Development," the Delhi Economy Survey 2008-09 presents a "description" of "types of settlements" in Delhi in order to "explain the situation" in the city (Government of Delhi 2009). The table is below.

Table 1: Settlements in Delhi		
Type of Settlement	**Est. Population in 2000 ('000s)**	**Percentage of Total Population of City**
JJ Clusters	20.72	14.8%
Slum Designated Areas	26.64	19.1
Unauthorized Colonies	7.4	5.3
JJ Resettlement Colonies	17.76	12.7
Rural Villages	7.4	5.3
Regularized-Unauthorized Colonies	17.76	12.7
Urban Villages	8.88	6.4
Planned Colonies	33.08	23.7
Total	139.64	100
Source: Statement 14.4 of the Delhi Economic Survey 2008-09 (Government of Delhi, 2009).		

In an environment where data is hard to get and even harder to verify, this Table appears and re-appears with remarkable consistency across the policy landscape in Delhi.[32] The Delhi Economic Survey (2008-10) shares it, for example, with the City Development Plan, the Master Plan of Delhi 2021 as well as the Delhi Urban Environment and Infrastructure Improvement Report 2021.[33] Though its data dates back to 2000, the Table is still the most (and indeed the only) cited set of statistics on the types and relative quantum of housing in the city. It is then both an empiric and an artifact – used as much as for its representation and categories of enumeration as for its numerics. Its categories are the terms used to speak about housing in the city – by the judiciary, planners within the Delhi Development Authority, the city and central governments, the municipal authorities, the media and by city residents themselves.

Within the courtroom, these categories are the spaces within which the Judges map the intersections of law and planning as well as the key data point for both petitioners seeking evictions well as those resisting them. The Table appears in nearly half the legal petitions filed within the Court studied later in this dissertation. Within governance and planning, these categories represent the dominant understanding of how settlements are understood within different policy paradigms. Through their presence in the various policy documents cited above, they determine how the city is made legible to planners and policy makers thereby determining access to services, political participation and

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[32] For a related argument on the deliberate obfuscation of data within Indian planning, refer to Ananya Roy's idea of "unmapping" in Kolkatta. See Roy 2003.
[33] Supra, fn 21.

resources.[34] Over the past decade, these categories have also become part of an everyday discourse that that through its pervasive presence and use has become "an ordinary archive" (Sundaram 2009) of the city, used by print and news media and city residents alike to describe their own and other neighborhoods and settlements. In our assessment of planning's failures and the particular history of those failures in Delhi within housing, the Table therefore represents an ideal starting point.

At first sight, the Table seems to confirm a failure of planning – it says that only 24% of the city lived in "planned colonies"[35] in 2000. What could be a greater indictment of planning than nearly 75% of the city living in housing that is apparently "unplanned"? Yet as we problematise this failure, we must ask a different set of questions: how were these categories constructed and defined? When was housing constructed under each of these categories? By whom? How do these categories relate to where and how different urban residents actually live in the city? What makes one category of housing "planned"? Conversely, what is "unplanned" about housing in the other categories? How do "planned" and "unplanned" relate to the "legal" and the "formal"? Which of these categories possess either *de jure* or *de facto* security of tenure and on what basis?

Finally but perhaps most importantly: how do these categories relate to the city's three Master Plans? I relate narratives of failure in planning specifically to Master Plans in Delhi for two reasons. One, Delhi is arguably India's most planned city. As I will argue in this chapter, from the establishment of the grand British imperial capital in 1911 through the large-scale acquisition of public lands just after independence to today, Delhi has been subject to an extraordinary gamut of state-led attempts at spatial regulation through Master Planning processes. The Master Plans themselves are then one of planning's most visible presences in the city. Two, in ordering evictions, the Delhi High Court and the Supreme Court of India repeatedly spoke of the Master Plan – what they called the "Plan in its legal position" – when they spoke of planning.[36] It is important for our analysis, therefore, to assess, in particular, not just the categories of housing but how they relate to the city's Master Plans.

In this chapter, I analyse this Table through a necessarily partial but illuminating history of inhabitation in the city. Using a series of geo-spatial maps, I visualize – as far as it is accurately possible to do so – where housing described and defined by these categories was built in the city from the issuance of the first Master Plan in 1962. On these maps, I then transpose Delhi's three Master Plans, using the result along with additional housing data to assess the relationship between these Master Plans and the building of actually existing housing stock. I seek to map, in a sense, the magnitude and textures of the gaps between imagination, intention and actual practice, arguably one of the most commonly understood "failures" of planning. Finally, I map evictions in the city from 1990-2007 in

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[34] To cite just one example, Delhi's award-winning flagship citizen participation scheme called *Bhagidari* is only open to resident associations formed in Planned Colonies, Urban Villages, Slum Designated Areas or Regularised-Unauthorized Colonies, and not to JJ Clusters, Unauthorized Colonies or Resettlement Colonies. Put another way, belonging to the latter three categories implies that no less than one third of the city's population is denied participation in a scheme intended to promote citizen participation.
[35] Neighborhoods are often referred to colloquially in Indian cities using the English word "colony." I make an argument about the political import of this in the concluding section of this chapter.
[36] I detail this argument in Chapter Two.

order to juxtapose sites of eviction, existing housing stock and the Master Plans and further interrogate the idea of "planned development."

I do so to argue that, in Delhi, the "chaos that is urban development" that Verma (2002) describes is not planned but it is, to twist Peattie's phrase, an outcome of planning. Plans do not control but they influence, determine and limit. Problematizing planning's failures allows us to find what I am calling the *traces of planning* – its legacies both historical and contemporary and its presence in the contemporary city either in absence or presence, in failure or success. Within housing in particular, planning plays three key roles: (a) it determines spatial patterns of settlement and inhabitation even in cities that are "unplanned" and "chaotic" as the Master Plan acts as a *bounding condition* for different kinds of settlements; (b) it produces and regulates illegality as a "spatial mode of governance" (Roy 2003); and (c) it creates categories that become the basis of a socio-spatial urban order that deeply impacts regimes of belonging and citizenship. Urban practitioners in a city like Delhi, I argue, have no choice but to engage with planning precisely because of the continuing relevance of what are considered its 'failures.'

Structure of the Chapter

The Chapter is structured in four parts. The first traces a brief and directed history of planning in Delhi focusing on the city's three Master Plans in order to provide the necessary context for our analysis. The second then presents the categories of the Table as well as a set of theoretical frameworks to think about categories and categorization as political practices and techniques. The third then uses these frameworks to assess the categories of housing and presents the maps and data on actually built housing as well as evictions in relationship to the Master Plans, in particular, and the planning process more broadly. The final and concluding part then presents the key conclusions of the chapter's arguments and outlines the diagnosis of planning that failure offers us.

A Brief History of Planning Time

As we diagnose planning, this section takes as the scope of its historical analysis a working definition of planning in Vanessa Watson's particular but useful analysis that describes urban planning as "intentional public actions" which "impact the built environment" (Watson 2002). In a context where planning has never existed outside developmentalism (Rajagopal 2007), I further interpret Watson's notions of "attempts" to encompass what Solomon Benjamin has described as the universe of "policies, projects, and Master Plans" (Benjamin 2008). Yet throughout this section, as I historicize "planning" at different conjunctures in Delhi's history, we shall already begin to see the diversity of what "planning" has meant and been in the city. I start with the shifting of the British capital from Calcutta to Delhi in 1911.

Building the Colonial Capital (1911-1947)

The British decision to establish a grand new capital in Delhi in 1911 was an act that Peter Hall has described as one of the great "monumental exercises" of the City

Beautiful movement. Delhi was to be, Hall argued, in the minds of its architects, "not English, not Roman, not Indian – it was to be Imperial." There was, he argued, "a total concentration on the monumental and superficial, on architecture as a symbol of power, and correspondingly, almost a complete absence of interest in the wider social purposes of planning" (Hall 2002).

The extraordinary presence and importance of spatial Master Plans in Delhi's history begins with the imperial capital. The new British capital was to be built on Raisina, a hill south of the what came to be called the "old city" which was to be left untouched and marked off by the equivalent of a *cordon sanitaire*, a spatial separation between old and new, native and colonial. Yet imperial Delhi was not just separated into colonial and native cities – *dual cities* (see King 1976; Lamprakos 1992; Rabinow 1995) – but was also strictly segregated even within them. Anthony King's seminal study of the city established it as paradigmatic example of the colonial use of zoning within residential housing. Housing in the new imperial capital was built in strictly zoned by class of worker – each category then being provided a house that was "appropriate" for it in design, size, amenities and social standing (King 1976). These categories of housing and practices of residential zoning took, argues Stephen Legg, "the modern functionalism of urban space and combined it with a colonial rationality based on an ethos of racial difference masquerading as class distinction" (Legg 2007: 46).

Colonial urban technologies of distinction required the separation, argues Awadhendra Sharan, of "the citizen in the imperial domain" with the "subjects of the colonies." Beyond differentiated zoning, discourses of hygiene, pollution and the dangers to public health were actually, Sharan argues, the "foremost technology of urban governance." In particular, it was the use and application of laws of public nuisance that concerned offences affecting public health, safety, convenience, decency and morals through which colonial urban governance occurred (Sharan 2006). As he argues:

> "Nuisance and disease, in the colonial imagination, thus called for both material improvements and containment of the dangers posed by native habits. Cultural differences translated into spatial distinctions. Referents of pollution in colonial narratives were always in excess of "nature" and included elements of aesthetics, racial difference and class biases" (2006: 4907).

Stephen Legg argues that attitudes towards "improvement" were marked by the twin needs of development and containment. Writing about slum clearance as well as state responses to tuberculosis, he argues that "the transmissibility of disease created border anxieties that were epidemiological, racial and political, and thus reinforced segregationist policies of neglect that typify the "dual city" approach to colonial urbanism" (2007: 191).

The legacy of the colonial city was not just spatial but institutional. In 1937, the Delhi Improvement Trust was established in order to create the technical capacity to manage the city against its three diagnosed dangers of nuisance, sanitation and congestion. In the first proposal to institute the Trust, AP Hume argued that an entity was required to guide the planned development of Delhi that would have both statutory power as well

as not be prey to the 'politics' of the municipalities. As I shall argue below, the yearning for a technical authority free from 'politics' would return to haunt the birth of the Delhi Development Authority some years later. Yet, as Legg argues persuasively, this was not a story of colonial control that re-shaped the city without friction or resistance. The Improvement Trust was, in fact, a story of "limited political capacity and a tightly financed local administration." In fact, Legg argues, the "attempt to impose imperial order on the landscape through housing techne was under-funded, met a recalcitrant and reflexive public, and did not keep up with the changing national context" (2007: 35). In other words, the narrative of failure is as old as the dreams of planning— even imperial ones.

Independence and partition transformed the landscape in which the Delhi Improvement Trust functioned. The population of the city tripled within months – growing from 400,000 in 1947 to 1.7mn in 1951. The needs for intervention in terms of housing, health and infrastructure were immense. Independence had brought a narrative of nation-building that sought to reverse the discourses of colonial urbanism if not immediately, as we shall see, its practices. Independent India first had to make space for refugees from Pakistan in a nation-building exercise that expressed itself most immediately as a demand for housing and infrastructure in the capital city. As Sharan puts it rather poetically, it was in "addressing the needs both of the victims of partition and [to ensure that] those who were merely poor and working towards the making of a national capital that would not suffer the psychological and social burdens of mass poverty" that "Delhi began preparing for a planned future" (2006: 4908).

Interim General Plan for Greater Delhi (1955-1962)

> *It was only natural, once we gained our political independence, that Delhi should become an important capital with the eyes of the world on it. It is also natural that today we are trying to build up a Welfare State.*
>
> <div align="right">Amrit Kaur, Minister of Health
Foreword to the
Interim General Plan, 1956</div>

Despite the proclamations cited above, Amrit Kaur's first words in the foreword to the Interim General Plan for Greater Delhi (hereafter, IGP) strike a rather different tone: "All is not well with the Capital" (Town Planning Organisation 1955). She had good reason to be worried. An epidemic of jaundice and cholera in 1955 had taken an immense toll on the new capital of independent India whose population had already nearly doubled within just a few years as it accommodated post-Partition refugees from Pakistan. The Town Planning Organization had been set up in 1955 under the Ministry of Health, and in 1956, it issued the IGP. The IGP was always intended as a placeholder, a set of immediate (i.e. within 2-3 years) responses that would lay the groundwork for the Master Plan of Delhi that was to come. (Sivaramakrishnan 1969)

The metaphorical and literal disconnect between old and new Delhi described above was one of IGP's key departures from the Delhi Improvement Trust (hereafter, DIT).

The DITs fate was sealed by what is likely one of independent India's first urban documents: the Birla Committee Report. Constituted under the Chairmanship of G. D. Birla, one of India's best known industrialists, with the presence of three members of parliament and a set of technocrats, the committee had been appointed to investigate the working of the DIT (Government of India 1951). The report eviscerated the agency. It held it responsible for failing the city, its poor, its environment and planning in general. In its report, the committee called for a powerful, city-wide, centralized and singular planning and developmental authority.

The IGP is marked by this call throughout its chapters. Be it transport or water or housing, the "mix-up of governmental jurisdictions over-lapping, conflicting rules, even different tax structures" is held centrally responsible for urban failures. The Plan quotes the Birla Report directly several times, each time using a variation of the same diagnosis: "there was neither co-ordination, nor overall supervision and planning of the activities of these agencies" (1955: 6).

The result was the creation in 1957 of the Delhi Development Authority (DDA) through its attendant statutory legislation, the Delhi Development Act. The DDA was the "single authority" whose role was "to promote and secure the development of Delhi according to plan" (Government of India 1957). It was from the DDA's office that the first Master Plan for Delhi was issued in 1962 and it remains, to this day, a key actor in shaping the city.

The Delhi Experiment: Building the Welfare City (1955-1975)

The Master Plan of Delhi 1962 (hereafter, MPD '62) was an international project (Delhi Development Authority 1962). A team put together by the Ford Foundation was headed by Albert Mayer, known for his writing on regional planning, green belt towns and what Sundaram calls the "anti-urban utopia of decentralization" (Sundaram 2009) prevalent in American planning practice at the time. Ford paid their salaries directly – it was a $215,000 grant – and the team worked with members of the Town Planning Organization who had drafted the IGP a few years earlier. Other than Mayer, none had any experience in working in India, or even Asia, let alone in Delhi.

The imprint of the American planning team is clear to see in the MPD '62. It is a regional plan, conceiving of "six ring towns" that were "self contained in matters of work and residential places but with strong economic, social and cultural ties with the city" (1962: 1). These lay beyond a mile-deep green belt that ringed the urban centre and were connected through automobile-based circulation and transport networks. The MPD '62 further divided the urban centre into eight planning divisions, each a "self-contained" city within a city centered around a neighborhood, communal and public facilities and a central district shopping and commercial centre. At the heart of these divisions was a concern to rebalance densities across the city. Decentralization – getting the "right balance between residential use and employment" – was critical in this rebalancing as was a strong emphasis on zoning. Strict, single-use zoning separated and sought to functionally order the city from what was seen and repeatedly lamented "undesirable mixing of land uses almost everywhere in the city" (1962: 5-7). It was, as Sundaram

notes, the "first major effort at a management model for the postcolonial city through the rational language of modern urbanism" (2009: 45).

Yet, as the IGP had itself remarked just a few years earlier: "the character of a plan is influenced not only by its own objectives, but also by the environment in which it must operate and to the available instruments by which it can be carried out" (Town Planning Organisation 1955: 75). The "environment" at the time was evidenced by the Birla Report. The report, argues Sundaram, provided "clear cues" to the "emerging elite consensus" on the city: "centralization, an acknowledgment of 'social justice' and a 'Master Plan'" (Government of India 1951: 34). How did these three elements of this Plan play out particularly for the production of shelter and housing in the city?

Centralization and Control

"Planned growth in the past," argued the MPD '62, "has been very much hampered by the lack of developed land and speculation in land" (1962: 5). Despite the passing of the IGP, by 1962, non-conforming construction of housing had already taken root in the city. Slums, as the first national Five Year Plan (1951-56) as well as the Second (1956-61) had noted, "proliferated." The reasons for the emergence of both of these undesirable housing types was seen to be high land prices. It is the "soaring prices of developed land," argued the MPD '62, that have made the "the low and middle income groups [resort] to unauthorized house construction in the absence of developed land within their means" (p 7).

I have already argued that the Birla Committee Report had led to the formation of a "singular, centralized authority" in the form of the Delhi Development Authority (hereafter, DDA) to enforce regulations and "control and secure" the growth of Delhi according to Plan. The parallel, and perhaps more important, attempt was what I. K. Gujral (who would later go onto become Prime Minister) called "the Delhi Experiment" (Gujral 1973) – the largest land nationalization in Indian urban history.

In 1959, the DDA notified 34,070 acres of urban and urbanisable land in Delhi for acquisition under the Land Acquisition Act that would be "be sufficient for the growth of Delhi according to plan for the next 10 years or so" (Delhi Development Authority 1962: 6). The land was to remain in public ownership with developed plots being leased out to individuals or co-operative societies or auctioned for development by approved state agencies. The revenue thus earned would enter into a "Revolving Fund" that the DDA could then use to fulfill its obligations for balanced, planned development as imagined by the Master Plan. Land nationalization went hand-in-hand with other measures of centralized, governmental control on urban transformation. In the 1960s, the DDA was imagined as a single actor that would regulate or itself build all categories of housing for what came to be called low, middle, and high-income groups/categories. Rent Control and Urban Land Ceiling Acts were passed. The City was to be rationally and centrally controlled towards determined ends. For this to succeed, land had to be under state control. Direct ownership of land, argued the MPD' 62:

> makes planning and implementation of plans easier and is imperative if slum clearance, redevelopment and subsidized housing and provision of community facilities according to accepted standards have to be undertaken, as indeed they must be in Delhi, in a determined way (1962: 7).

It is important to recognize the political and economic context in which MPD '62 emerged. India had chosen a centralized, strongly nationalist, planning-based model in its economic development strategy, with state ownership of key industry (the "commanding heights" as Nehru termed them) and a large bureaucracy and public sector. Planning, argues Partha Chatterjee, in its broader sense, was a "double deception." It was presented as technical, reasoned, and "free of politics." Yet it was also was the state's "central representation of itself and its rule" (Chatterjee 1993). Nationalization and strong central control were, in fact, the "ideal conditions" for planning that both the Interim General Plan and the Birla Committee Report imagined and described.

The ambivalence at the national level to private enterprise was reflected in the city – private developers were simply not allowed to build. A deep distrust of market mechanisms towards building an equitable society was prevalent and openly stated. "The market mechanism," argued Gore, "is the one least suited to achieve egalitarian objectives or to solve equitably the dilemma faced by governments of choosing between their politically necessary commitments to the poor and their need to fall back on the capacity of the well-to-do to finance their well intentioned projects" (Gore 1975) The editorial of *Yojana*, a prominent journal printed at no less than the Planning Commission, argued that cities were marked by "a tremendous increase in urban land values and acute shortage of civic amenities" and that "these problems do not solve themselves through market processes" (Yojana 1965). Sundaram argues further that the nationalization spoke to "a moment in Delhi":

> "the clamor for a just city, the promise living space and control of speculation by a powerful, technocratic state body. Hostility to speculation was voiced periodically in parliament and in the newspapers and the DITs dubious record made sure that the Master Plan's anti-speculative gloss spoke to a receptive audience" (2009: 52).

Yet reasons were not just economic – at stake was control over the politics of managing and governing the city. As Gujral argued: "rising land values create powerful vested interests and their lobbyists succeed because public opinion on urban issues is almost non-existent" (Gujral 1973). The Delhi Experiment was, therefore, to bring together rational planning and urban modernism with a strong, centralized welfare state.

The land acquisition and anti-market sentiment created an ambitious agenda: the DDA would build all housing stock in the city. Public housing was not just housing for the poor but for all residents. Four strata of housing, each with its own set of aesthetic and development controls, were designed for four types of citizens: the High Income Group (HIG), Middle Income Group (MIG), Low Income Group (LIG) and Economically Weaker Sections (EWS).

Imagining the Welfare State: Poverty and Inequality in the First Plan

What did planners and political leaders mean by their frequent invocation of the "welfare state"? One clear component of the idea of the Welfare State was that

inequality – both in terms of income and social as well as spatial segregation – was clearly articulated as a problem that needed to be addressed. Repeated exhortations to prevent the reproduction or deepening of urban inequality are across the IGP and the MPD '62. The MPD '62 keeps as one if its primary objectives the recognition that it is "of the utmost importance that physical plans should avoid stratification on income or occupation basis." Warnings about segregation repeat periodically. Even zoning regulations, it was warned, "[must not result in] any kind of human segregation like excluding certain communities, or income groups from certain areas" (Delhi Development Authority 1962: 42).

MPD '62 did, in fact, earmark "suitable sites in several zones where these very low income group people may be able to put up cheap houses."[37] The first slum clearance scheme had begun in 1956, followed by the Jhuggi Jhopri Removal Scheme (hereafter, JJRS) that was active from 1960-67. In 1966, 36,000 households were resettled; this number rose to 54,000 in 1973. The terms of resettlement, however, were clear. Resettlement sites had to be near existing work centers, or new work centers had to be constructed near resettlement sites. Plots could "not be less than 80 sq m" and the process was meant to ensure "that the existing community and social patterns of the people are maintained and strengthened." Recognizing that the poor built housing incrementally the scheme argued for flexible building codes but insisted that "space standards for schools, parks, streets etc should be as for many other area" (1962: 27). What is important to note as well was that "illegality" was not part of any discourse about the 'slum.' In fact, the state's failure to house the poor was clearly acknowledged by no other than the Prime Minister at the time, Jawahar Lal Nehru. "They are a blot on the Society's conscience," he once remarked – "It is bad enough to inherit slums but to allow them to grow is the society's fault; the government's fault."

Writing about evictions in the 1990s, Usha Ramamanthan argued the word "displacement" was not used in the 1960s at all because movements were seen as temporary halts in a longer narrative of national progress that would benefit all (Ramanathan 2004). "Displacement without alternatives," argues Sundaram, "was out of the question." Regular protests by Members of Parliament at the DIT offices and heated debates within the government ensured that the "slum question" was "a significant item on the agenda of postcolonial planning" (2009: 62).

This is not to say that the emphasis on slum re-housing was not motivated by fears of blight, disease and social unrest resulting from a culture of poverty. Indeed, even progressive writers and policymakers calling for housing the poor often spoke of "social tensions which may express themselves, at the individual level, in varied forms of alienation, impotent resentment, and socially deviant behavior and, at the group level, in agitations, inter-group rioting and organized violence" if the slum question wasn't addressed. As the Birla Committee Report remarked: "Bad environments affect us all alike; we are choked, each one of us, whether we realize it or not, by the meanness and squalor which stretches their tentacles upwards from the lives of our less fortunate

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[37] See *Introduction* in Delhi Development Authority 1962

citizens" (Government of India 1951: 15).

There was also undoubtedly a second, more familiar narrative within slum upgradation: the civilizing effect of a proper, urban existence. Awadhendra Sharan points out a deep-seated contradiction within the MPD '62. Alongside its emphasis on sheltering the poor, the Plan also called for the "village like trades and industries (viz. keeping milch cattle, pottery, tannery etc)" to be "moved out of the city" as would be "nuisance industries" or "obnoxious industries" (1962: 6). Sharan argues that it was through the talk of "work and its dangers" that the MPD played out a complex peripheralisation of the poor. The periphery, he argues, is a social and spatial category in the city – occupations thought to be "rural" or "village-like" were to be literally moved to the periphery of the city but also marked as marginal in the social imagination of the proper citizenship. The "rural" became the shorthand for the "cultural inferiority of nature" with its "the attendant lack of education and hygiene – a shorthand for the moral, economic and ecological issue of the 'basti'." The subaltern, argues Sharan, entered the Master Plan "as a subject to be made into a citizen" (Sharan 2010: 226).

The Beginning of the End: Paradigm shifts in Housing in the early 1970s

In the 1960s, argues Wadhwa, the emphasis within government efforts at housing provision had been "efforts to reduce the cost and price of housing (the technology paradigm); by making available subsidized housing (slum clearance and relocation schemes and social housing schemes); making credit available for housing on soft terms (setting up of housing and urban development corporation for this purpose) and through direct price controls (Rent Control Act)" (Wadhwa 1988: 1763). By the early 1970s, however, Wadhwa argues that realizations of the limitations of the DDA to fulfill its objectives were becoming apparent. The emphasis shifted, he argues, from need-based housing to demand-based housing.

This had significant implications. The answer to the slum question began to shift from resettlement and the building of new houses to in-situ upgradation and environmental improvement schemes in existing slums though older relocation schemes were not totally discontinued. In 1973, the Environmental Improvement and Upgradation in Slums Scheme was initiated. Housing institutions were forced to take on a "balance sheet approach to the problems of housing" and "demonstrate full-cost recovery" (Wadhwa 1988: 1763).

In 1973, the first full review of the MPD '62 found the DDA severely wanting on many fronts, one of which was housing. There had been a significant shortfall in housing built by the DDA even compared to its own targets, let alone estimated need and demand. In response, the first Self-Financing-Schemes (SFS) were announced through the early 1970s where residents were allowed to expedite the building of their own flats by paying the subsidized cost in a single installment. These schemes, however, were only open to middle and high-income group housing that, as I shall argue later in the chapter, served to further skew the already imbalanced housing stock in the city.

Ashish Bose called the first decade of the DDA's plan "eleven years of inactivity" in housing. "Land is not an end unto itself," he argued, "our objective is housing. Therefore, unless there is one unified policy for land and housing, a land freeze will only worsen the situation." Indeed, though the DDA was successful in raising revenue for its Revolving Fund, it had, Bose argued, "failed in attaining the real objectives of the orderly development of Delhi, control of land prices and improvement in the housing situation." The "massive land freeze without building houses on an equally massive scale," he argued, was the primary factor for the "failure" of the MPD '62 (Bose 1973: 15-17).

Indeed, by 1975, there was a general sense of acknowledgment that the DDA had been unable to keep up with demand for housing and that "planned development" was under great peril. Private construction of housing colonies, though not legally allowed, had proliferated. The Plan's population projections for 1971 had fallen significantly short, slums were widespread despite waves of resettlement and land and housing prices and speculation continued unabated, be it for legal or illegal housing. The Delhi Experiment had begun to unravel.

Map 1a: Delhi Master Plan, 1962

MPD '62

Urban Development Area
Rural

Map 1b: Delhi Master Plan, 2001

MPD '01

Urban Development Area
Rural
Asola Wildlife Sanctuary

Map 2: Delhi Master Plan, 2021

MPD '21

- ▇ Asola Wildlife Sanctuary
- ☐ Rural Areas
- ▇ Urban Development Area
- ▨ Urbanisable Area
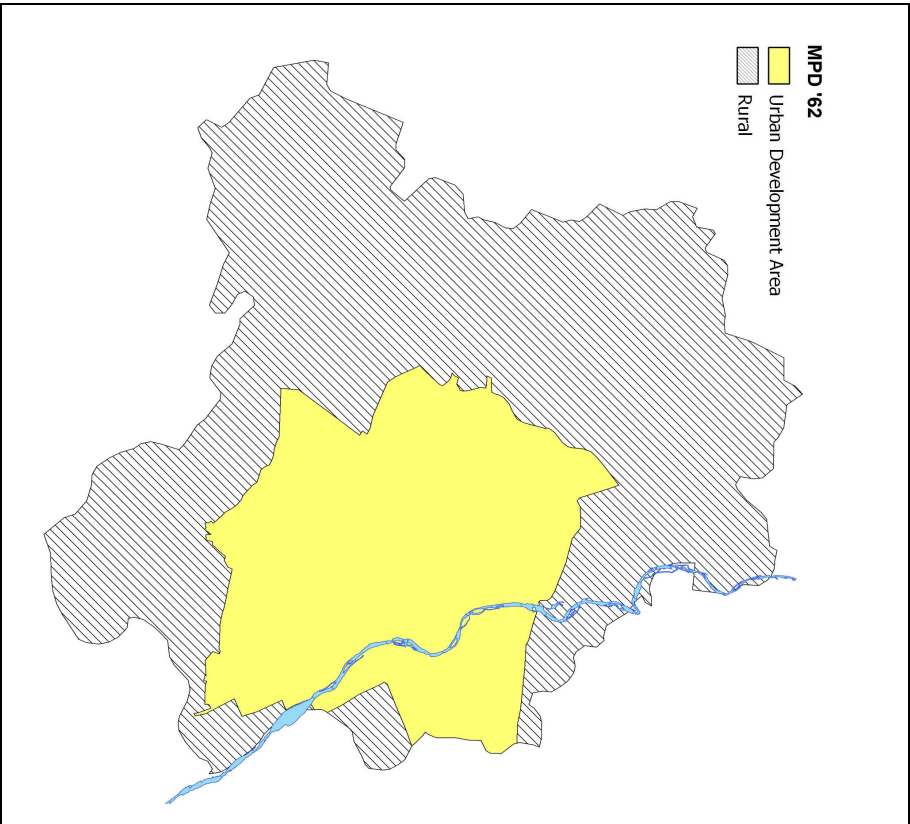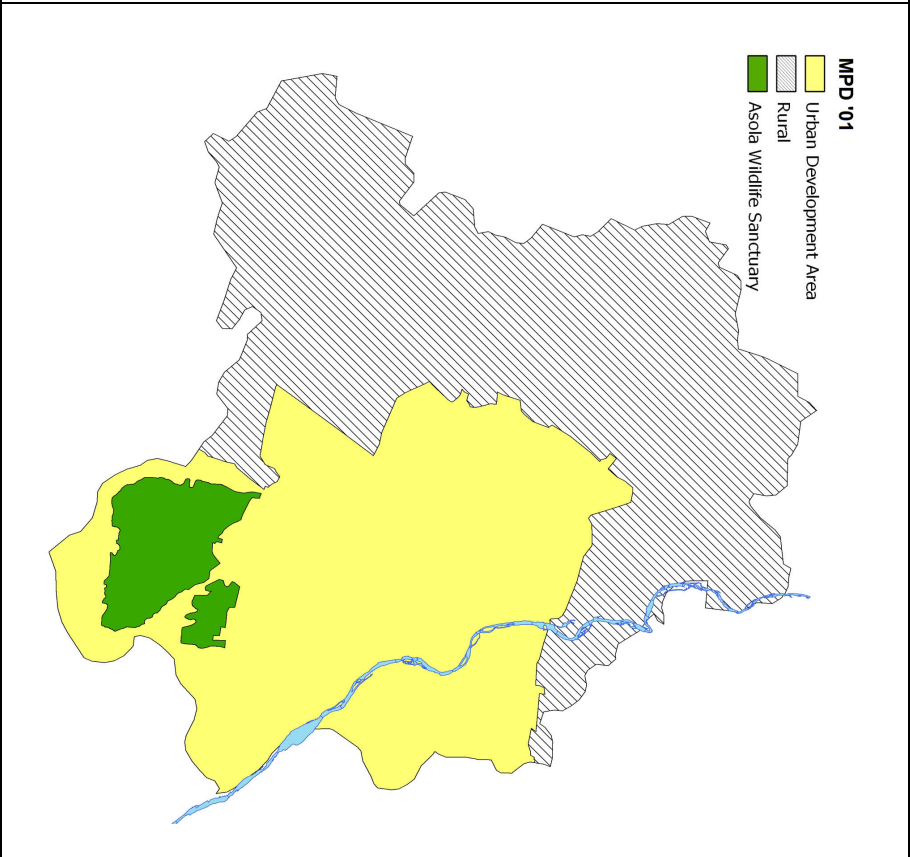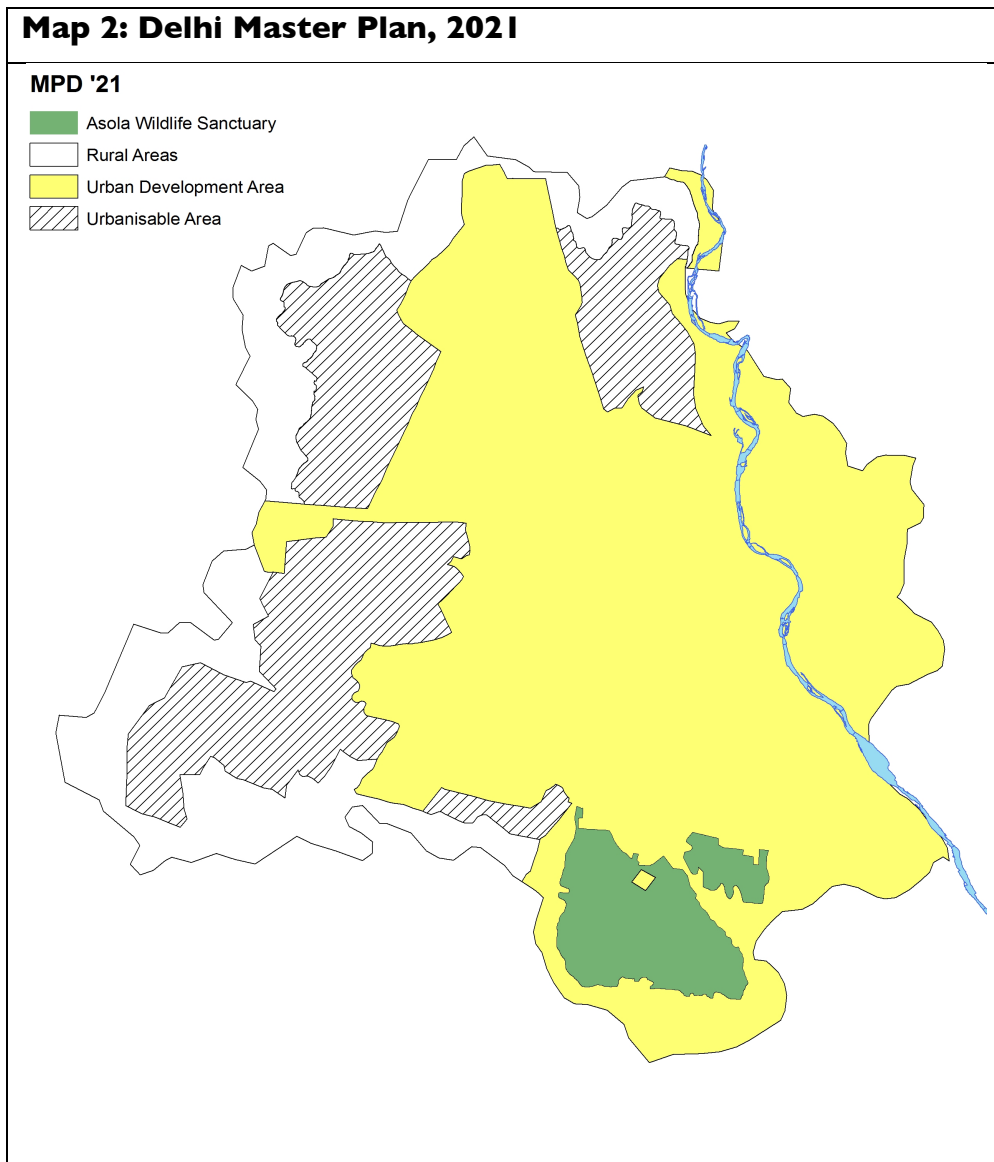
The Emergency 1975-77

Veena Das describes "critical events" as those that "invite old objects to inhabit unfamiliar spaces and thereby acquire new life" (Das 1995: 7). Colloquially often described as democracy's darkest hour, the Emergency refers to a two-year period from 1975-77 where a state of national emergency was declared by Prime Minister Indira Gandhi thereby suspending basic constitutional freedoms including the right to life, liberty, freedom of expression and freedom to assemble. The result was, as Tarlo argues, "press censorship, arrests, torture, the demolition of slums and tales of forcible sterilization" (Tarlo 2001: 2).

The official narrative of the Emergency, argues Tarlo, was to protect the nation's

security and development. War with Pakistan had just ended, the oil shocks of the early 70s had left the economy in bitter shape, and the promises of national development had begun to fade with low growth rates through the late 1960s. "We are not happy to declare Emergency," she quotes Gandhi as saying on Independence Day, August 15th, 1975, "but stringent measures [are] taken as bitter pills [that] have to be administered to a patient in the interest of his health. No one can prevent India marching ahead."[38]

Other narratives of the Emergency, and indeed the popularly accepted narrative today, is that Gandhi was suppressing the rise of opposition political parties that challenged the Congress Party's electoral dominance. The Congress had ruled at the Centre continuously since Independence. Raj Narain, whom Gandhi defeated in 1971, accused Gandhi of winning the election by fraud and challenged her victory in the Allahabad High Court. On 12th June, 1975, the High Court found Gandhi guilty and declared her election null and void. However, it acquitted her of the much more serious charges of violence, intimidation and fraud leveled by Narain. Trade unions, student movements and opposition parties took to the streets in nation-wide protests. On 25th June, 1975, Emergency was declared.

Whatever its origins, the Emergency heralded itself as the time when a "firm hand" would achieve progress and governance. The emphasis in the slogans of the Emergency was clear: Discipline and Development were the twin arms of rule. A 20-point economic program was declared. Our interest is in this narrative is on the confluence of two of the program's intentions: family planning mainly through mass sterilization and slum clearance.

Estimates on the number of households evicted during the Emergency vary from 150,000 (Tarlo, 2001; Government of Delhi, 2006) to as high as 200,000 (Ali 1995), i.e. between 700,000 to 1 million people at a conservative household size of five. Looked at another way, records of the Municipal Corporation of Delhi themselves record 1,373 slum clusters existing in Delhi in 1973 and only 290 in 1981. The remainder represents one measure of the extent of evictions in the city. Post-eviction resettlement came with an additional condition: sterilization. Tarlo's groundbreaking study of the Emergency details what the official narrative of slum evictions during the Emergency denies until this day: alternative plots for resettlement required that the beneficiary produce a certificate that he had undergone a vasectomy. Sterilization camps and forced sterilization were common in the Emergency and Tarlo shows the role that the DDA and its institutions played in linking the evictions and resettlement scheme with them (Tarlo 2001).

The evictions themselves, with Jagmohan, secretary of the Ministry of Urban Development and the Indira Gandhi's son Sanjay Gandhi at the helm, were, by all accounts, brutal. One incident stands in popular memory as a marker of the violence involved. On 19th April, 1976, at Turkman Gate, local resistance to family planning and demolitions precipitated first a fierce resistance and then what Tarlo describes as "a

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[38] Speech from Red Fort, 15 August, 1975, from Gandhi (1984) as cited in Tarlo (2001: 25).

brutal massacre of innocent citizens" (2001: 38). The Shah Commission, set up to investigate the Emergency after its end in 1977, described evictions during the Emergency as "an unrelieved story of illegality, callousness" and a "sickening sycophancy" of the Police to the orders of Sanjay Gandhi.

The Emergency, argues Awadhendra Sharan, was a critical event for the imagination of the city as well, and particularly for Jagmohan, who would return in the 1990s and 2000s yet again – this time in the Ministry of Tourism – and be termed "Demolition Man" for his central role in instigating and implementing slum clearances. It marked a shift, argues Sharan, in thinking about the slum and the urban poor. From slum clearance that was "for their own good" and part of a broader nationalist and civilisational mission, the focus shifted to the "illegality of the slum dweller."[39] The developmental narrative had shifted around Jagmohan – the slum had no place in the twin narratives of "discipline" and "development."

Indeed, the writings of Jagmohan himself illustrate Das' provocation that critical events give new life to old objects. In 1975, Jagmohan had written about the need "to eliminate fake modernity" represented by the desire for new technology in housing. He argued that "housing by the people for the people" should be based on "vigorous and self-perpetuating tradition of building with the future inhabitant's own hands and with material costing virtually nothing" (Jagmohan 1975). Costly housing, he had argued, should be banned. Recognizing the political difficulty in curbing the activities of the rich, he had argued for a recognition of political priorities and said, quite directly, that "there should be little sympathy for that class of people which is willing to pay high rents." After the Emergency, Jagmohan found himself vilified. In his attempted defense, he wrote: "What was done in Delhi was development, not 'demolition'. It was a dawn, not a doom" (Jagmohan 1978).

The Emergency ended in March, 1977, in democracy's "finest hour" when opposition parties won a landslide election against Indira Gandhi and Morarji Desai became the first non-Congress Prime Minister of India. Yet the Desai government fell in 1979, and in 1980, a mere three years later, Indira Gandhi, no longer democracy's villain, was re-elected as Prime Minister. The legacy of the Emergency is an equally complex one for housing – in the Master Plan that was to follow and, indeed, in several policy and planning documents that have followed since, the Emergency is described not as a time of mass evictions but instead, to cite an example from the current City Development Plan for Delhi, "a concentrated effort at resettlement" that made "significant progress on slum rehabilitation."[40] Tarlo argues that the Emergency is not a single event but "trope through which to explore the emergencies of everyday life for poor and marginalized sections of the Delhi population" (2001: 5) including the support, she says, the "firm hand" and "discipline" enjoyed among many.[41] Indeed, Jagmohan's return in the late 1990s and early 2000s to once again be at the helm of demolitions – this time within

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[39] Personal Interview, dated 23.02.2011.
[40] Section 6, p. 6
[41] Though he later publicly regretted it, JRD Tata was one of the more famous supporters of the Emergency particularly for its notions of economic discipline.

a fully functional democratic framework – served as quite a literal reminder of the Emergency's contemporary legacies. The ghosts of discipline, development and efficiency remain firmly embedded within the contemporary political landscape of planning in the Indian city.

Seeding the Urban Crisis 1977-1990

After the Emergency, argues Dunu Roy, a leading Delhi-based urban activist, "the government's bulldozers pulled back for a while." It was, he said, "a way of making up for the excesses of the Emergency and its demolitions."[42] The "strong public opposition" to these "excesses," further argues Baviskar, meant, in fact, that, "disciplinary desires lay dormant for the next two decades" (Baviskar 2003: 92). Indeed, many of the *bastis*[43] that became the target of evictions in the 2000s were built in this time of dormancy through the 1980s, particularly to house the influx of migrant labor brought into Delhi to build the stadia and new infrastructure for the Asian Games in 1984. Municipal records indicate that the number of *bastis* in the city rose from 290 in 1981 to 929 in 1990, nearing the same numbers as before the Emergency. Sundaram argues that the Emergency represented the break between politics and urban power: "technical expertise was now tainted" (2009: 77). Macro control was replaced by "minor practices" and "local politics" – it was in these local negotiations that squatting found relief.

I argued above that the Emergency was a critical event that marked a departure from the discourse and paradigms of building a welfare state. This shift was evident in the second Master Plan for Delhi, meant to chart the city's growth from 1981 (when the purview of the MPD' 62 ended) for another twenty-year cycle till 2001. The Master Plan for Delhi 2001 (hereafter, MPD '01), however, was only drafted in 1985 and issued in 1990, halfway though the time period it was meant to apply to. This delay seemed an apt metaphor for a plan that many saw, quite simply, as ineffective and irrelevant. The Plan is a thin document, poorly written, littered with errors, and with little narrative. In fact, it mostly consists of a detailed development code and street-wise exceptions for mixed-use classifications. It undeniably has the appearance of being an afterthought.

"Delhi has only one Master Plan and that Master Plan is the MPD' 62. The Second Plan just marginally extended the first," argues planner and conservation architect AGK Menon, who has been centrally involved in committees to draft both the second and current Master Plan.[44] MPD '01 does explicitly indeed take the basic objectives, urban

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[42] Personal Interview, dated 04.04.2011.
[43] The Hindi/Urdu word *basti* (related to *basna*, to settle) means settlement. Colloquially, it is the word most commonly used by residents of urban poor settlements to describe their homes and hence it is the word used throughout this dissertation. Colloquially, *bastis* are understood to represent settlements typically marked by some measure of physical, economic and social vulnerability. It is these settlements that are often called "slums." Within planning paradigms in Delhi, however, a "slum" refers specifically to a settlement designated as such under the 1956 Slum Areas Act. I use the word 'slum' only to either refer to this specific planning category or to report its use in English when necessary. In relation to planning, *bastis* cover three types of settlements: Slum Designated Areas, Resettlement Colonies and JJ Clusters. I discuss this categories in detail in the later section of this chapter.
[44] Personal Interview, dated 09.11.2010.

area classifications and the regionalist model of MPD '62 as a given. Yet there are important differences in the relationship between the two plans that are worth highlighting.

First, the MPD '01 adds precious little urban development area to the MPD '62. The total urban extensions to the development areas identified in MPD '62 are only 4000 acres, or 40 sq km. Yet, in 1990, when the Plan was issued, the built up area of the city far exceeded the notified urban development areas. This is an important misalignment that I will return to later in the chapter.

Second, the MPD '01 removed its predecessor's emphasis on housing and shelter for the poor. The clear and primary objectives of the MPD '62 to build a "welfare state" where "social and spatial segregation must be avoided at all costs" were notably absent from the MPD '01. Here, the poor appeared instead as the source of a ceaseless migration and urban anxiety. Housing and shelter are not even one of the eight main objectives of the Plan. Instead, the MPD '01 emphasizes the need for "restriction." In the "context of urbanization and migration, [the city] needs a definite restrictive policy on employment generation" based on using "legal and fiscal measures" to "discourage industry." In every chapter in the document, the pressures on infrastructure systems, traffic, and the environment are mentioned repeatedly and linked to what the Plan calls a "population explosion" and increasing urbanization (Delhi Development Authority 1990).

Unlike both the IGP and the MPD '62, the MPD '01 had no language of participation and the need for people's involvement in the Plan. Dunu Roy says that though "in 1985, the first draft of the second Master Plan was also published for comments," unlike the first plan, "this one was not summarized or translated into Hindi and Urdu, nor was it distributed publicly" (D. Roy 2004). Terms of resettlement and low-income housing diminished. Instead of the minimum 80 sq m plots mandated by MPD '62, the MPD '01 said plots could be 25 sq m, and, in fact, could be reduced to 18 sq m if clubbed with some adjoining open space (Delhi Development Authority 1990: 66).

The MPD '01 emerged in a context where violations of the terms of the MPD '62 had become commonplace. "It is obvious," argued the MPD '01, "that during plan implementation process, there has been large areas of unintended growth. The resultant development has been unauthorized colonies, squatter settlements, the informal sector, [and] the incompatible uses (sic)."[45] The Plan was silent on how to deal with these violations other than arguing that a rigorous system of "monitoring" had to be put in place. In response to large-scale non-conforming commercial use in residential areas, it began to exempt individual streets from the zonal classifications of MPD '62. In the MPD '01, hundreds of streets, painstakingly listed neighborhood by neighborhood, page by page, were declared "mixed use." Yet even in this mixed use, there was a hierarchy of settlements that began to emerge and, indeed was arguably created, by the Plan.

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[45] See *Preface* in Delhi Development Authority 1990.

The Plan used property tax brackets to categorize residential neighborhoods, or 'colonies' as they are called, into categories from A to H. The basis of classification was the value of per unit property tax, i.e. the value of land and therefore an indirect measure of socio-economic status. A was the highest, H the lowest. The decision of where mixed uses were to be allowed and what kind of "commercial or professional activity" was to be permitted depended not on a technical principle or infrastructural assessment but on the category that the colony belonged to. The "extent of non-residential activity seen as being necessary or desirable by the residents varies from area to area," argued the MPD '01, "based on the socio-economic status of the residents as well as the past pattern of development in that area" (1990: 70).

At the same time, Resident Welfare Associations (RWAs) began to emerge in middle and upper middle class colonies in the city and were eagerly embraced by the Plan. Unlike the imagination of a strong and powerful state able to implement centralized control, the MPD '01 suggested quite plainly that it was RWAs that "should be asked to step forward to improve conditions in their locality." It read as a transfer of responsibility but also a pragmatic acceptance of the limits of state capacity. RWAs, especially of Category A to D colonies, began to become more powerful. Mixed-use classification of streets, for example, in a Category A-D colony happened only after consulting with the RWA; in Category E-H colonies no such consultation was required.

Faith in the planning process, however, was weak. Authors were writing about the "chaos that is urban development" and the "systematic failure of modern planning" in Indian cities.[46] The city mirrored the feeling of a nation – the 1980s in Indian economic history is often described as the "lost decade." National GDP growth rates hovered between 2-3%, population growth rates were not falling fast enough, steady and increasing out-migration of skilled professionals was common, the economy was stagnant and still bureaucratically controlled in what was called a "License Raj," consumption was still limited and media state-controlled. Anxiety about growth and unemployment dominated the political agenda and a creaking urban infrastructure only added to a sense of deep disaffection.

Urbanization was just emerging on the national policy agenda but, as late as 1985, urban scholars like Amitabh Kundu were still urging the political leadership to take urbanization seriously: "It would, therefore, be wise," Kundu argued, "for policy-makers to awaken to the realities, accept the trends of urban growth for the purpose of future planning and make provision for infrastructure and other facilities for the growing multitudes in a handful of large cities" (Kundu 1984). The Ministry of Urban Development – the first in independent India's history – was set up in 1985 in response "to the recognition of the importance of urban affairs."[47] In 1988, the first national report on urbanization was released by a central commission.

It was in the late 1980s that India's most serious economic crisis hit. In 1991, an interim,

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[46] See Verma 2004 and D. Roy 2004.
[47] Previously, the Ministry closest to handling urban affairs was called Ministry of Works and Housing. The citation is from the Ministry of Urban Development website at www.urbanindia.nic.in. Accessed 9th Feburary, 2011.

weak coalition government – one of a series of such governments at the time[48] – found itself with foreign exchange reserves so limited that they could only cover two more weeks of imports. The balance of payments crisis resulted in the country's most significant economic reforms as India accepted a bailout from the International Monetary Fund and began a program of economic liberalization to open up the economy.

Facilitating the City of 'Reform' 1990-2010

India's economic reforms in 1991 have been extensively documented and debated. Briefly, the reforms were composed of three key moves: liberalization of the economy and removal of trade-related restrictions and tariffs including opening up the economy to Foreign Direct Investment, privatization of sectors previously open only to state industries, and decentralization and deregulation aimed at reducing the presence of the public sector in the economy.

Reforms have been uneven across sectors, states and scales, as has their impact. While many point to consistent GDP growth rates of between 7 and 9 per cent since the late 1990s as well as increased public and private investment and consumer choices, critics point to deepening inequality, stagnation in poverty reduction and the concentration of new wealth in particular sectors and to only a small, elite section of the population. More importantly, as I shall argue below, the reforms have brought forth debates on paradigms of development and governance and, in particular, the role of public and private actors and institutions in economic, political and everyday life. What is uncontested, however, is that reform has brought a paradigm shift. Lowered restrictions have opened up India's markets and its people to an incredible influx of consumer goods and services, media and images of the world. The "licensing Raj" has given way to a rapidly growing service, consumption-centric and arguably increasingly urban economy that has, within it, a set of actors intent on claiming their place on a global stage.

What did this mean for planning? The Master Plan for Delhi 2021 (hereafter, MPD '21) was issued in 2007 – this time only six years late (Delhi Development Authority 2007). Outlined as a Plan for the National Capital Region (NCR) that included developed suburbs in neighboring states, the Plan begins with a clear location. "Vision 2021," it says, is intended "to make Delhi a global metropolis and a world-class city, where all the people would be engaged in productive work with a better quality of life, living in a sustainable environment" (2007: 2). How was this world-class city to be created?

Reforming the Public

MPD '21 makes a clear political shift from its antecedents. With a determined use of the past tense, it says that the, "process of planned development [in MPD '62] was envisaged as a public sector led process with very little private participation in terms of development of both shelter and infrastructural services." MPD '01 "reiterated this planning process" but MPD '21 imagined "a critical reform." This reform was "involving

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[48] Between 1989 and 1998, the country had six Prime Minsters in nine years, one of which lasted only 13 days.

the private sector in the assembly of and development of land and provision of infrastructure services" (Delhi Development Authority 2007: 2-3).

Public-Private participation is a key stated objective in the MPD' 21, be it in infrastructure provision in water or electricity or in housing. The Plan was merely putting into words policy movements that had already been put in place. As Kundu argues, permission was given to private builders in 1998 to "take up housing projects in plots of 30 acres or more by paying 20 per cent of the market value of land to government's shelter fund." This had "brought to an end" the key part of the Delhi Experiment in MPD '62: "the state monopoly on land" (Kundu 2003: 3532).

I have argued elsewhere that in the era of "reform" in India, inequality must no longer be hidden, justified or apologized for, nor can it be excused as a transitional phase in the longer story of the nationalist ideal of equality and dignity for all (Bhan 2009). As we accept "self-responsibilization,"[49] the responsibility of ensuring housing and access to services becomes not the responsibility of the state or the elite but of the poor themselves. The only pathway to it is through the market. The MPD '21 typifies this shift which Aihwa Ong describes as the "infiltration of market logics into politics" (Ong 2006: 16). In the chapter on physical infrastructure in the MPD '21, the erstwhile domain of state provided public goods lies transformed. Citing a crisis and severe deficiencies in the provision "particularly of water and power," the Plan "accepts the need for institutional capacity building, User Pays approach and public-private partnership as tools for institutional strengthening" (2007: 200) in infrastructural provision. It is not coincidental that power and water were the first infrastructural sectors to be privatized – though the former with only limited success and the latter without any.

The MPD '21 mirrors, in many ways, and cannot be read outside the context of the Jawaharlal Nehru Urban Renewal Mission (JNNURM), the largest urban policy initiative in India. Launched in 2005, the $2bn mission applies to 63 cities across India (Delhi is obviously among them) and is focused on two main components: Urban infrastructure and Governance (UIG) and Basic Services to the Urban Poor (BSUP). The JNNURM marks what Om Mathur calls "one of the most extraordinary shifts that have come about in India in the approach and thinking about cities and urbanization." This shift comes from "the need to realign the urban sector policies and programs to the emerging macro-economic context in the post-1991 period" and to reflect the "growing importance of the role of cities and urban centers in the domestic economy" (Mathur 2009: 31).

Indeed, the JNNURM begins with the understanding that cities could contribute 65% of the country's GDP but that these "urban economic activities" need infrastructure such as power, telecom, roads, water supply and mass transportation as well as civic infrastructure like sanitation and solid waste management. Infrastructure provision has been the prime focus of the first phase of JNNURM funding: airports, mass transit including metros and buses, roadways, and other large infrastructural investments, all

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[49] See Rose 1999

channeled through public-private partnerships.[50] The city has emerged on the national agenda, therefore, with a very particular vision of urban transformation in a particular political and economic moment.

This vision is most visible not just in the pattern of infrastructural investments in the city but also on the pressure on and rapid transformation of its peripheries. Peri-urban areas of Indian cities have been transformed, argues Michael Goldman, using an "array of new institutional forms" that challenge older forms of urban planning (Goldman 2010). The proliferation of Special Economic Zones (SEZs) as mechanisms to create new gated residential developments and integrated townships, he argues, is one such mechanism. These, as well as the infrastructural mega-projects mentioned above, are often made possible by creating institutions called Special Purpose Vehicles (SPVs) accompanied by their own legislative acts with the power to acquire and develop land.[51] SPVs are, by design and intention, not bound by either administrative or revenue boundaries of existing cities, and often, it is unclear to all actors involved who sets the terms of their engagement and whether it is the local, district, city, state or central level of the executive to which they answer. "This historical convergence of neoliberalization and world-city urbanization," argues Goldman, has led to a "new mode of spatial production" where "formal (yet opaque parastatal) state bodies [work] informally to change land tenure." This informality combines with the ability of global capital to be mobile to create a particular challenge for planning. How, Goldman asks, "can city dwellers imagine, and undertake, long-term place-based urban planning when the major financial actors have on their side of the bargaining table the ability to be permanently transient?" (2010: 21-23).

Shelter for All and Millennial Evictions

Within shelter and housing, the MPD '21 paints a curious paradox. I have argued earlier in this dissertation and elsewhere that evictions in Delhi increased in degree and frequency during 1990-2007 in a radical break from the 1980s. Yet these evictions occurred at the same time that the MPD '21 committed itself to a "Shelter for All" approach, emphasizing the need for housing for the poor. The MPD '21 argues that the reduction of plot sizes in resettlement colonies to 18 and 12.5 sq m in MPD '01 must be reversed and insists on at least 25 sq m size plots. It argues that relocation must be used only in cases of environmental hazards or if the land is urgently needed for public purpose, otherwise "in-situ upgradation" is the preferred option for all *bastis* regardless of legal or tenurial status.

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[50] Delhi has gotten a disproportionate share of allocations under the JNNURM. Its 52 approved projects have a total funding of Rs 7663.9 crores (Rs 766mn), of which a third is a direct contribution from the Centre. Beyond these, however, 24 additional projects related to infrastructure for the Commonwealth Games 2010 were approved through a fast-track process by a Cabinet Committee and cleared by the Competition Commission of India – a one-time only departure from standard JNNURM procedure of allocation. These projects alone are worth Rs 5243 crore (Rs 524mn), nearly doubling Delhi's total JNNURM budget. As Sivaramakrishnan argues: "Delhi because of its political prominence as National Capital and access to power has been able over the past several years to walk away with funds far higher than what equally populous cities elsewhere in the country have been able to do" (Sivaramakrishnan 2011).
[51] For example, the Delhi Metro Rail Corporation or the Delhi Mumbai Industrial Corridor Development Corporation Limited, are SPVs formed for infrastructural projects. Both the SPCs have jurisdictions that extend across multiple states with unclear and diverse relationships with other authorities, governments and institutions.

Like in other sectors, the private sector is imagined to be a key player in this provision. For all new private developments, 25% of units developed must conform to requirements for housing for the economically weaker sections as laid out in the Master Plan. For upgradation projects as well, "in-situ rehabilitation, including using land as a resource for private sector participation" is seen as a priority for *bastis* as long as they are "not required for public purpose." The private sector is to be lured to participate in upgradation schemes through giving "transfer development rights or the right to use part of the recovered land commercially with flexible FARs." The government and its institutions are "to play the role of a facilitator through policy and strategic interventions" (Delhi Development Authority 2007: 43-44).

The Plan acknowledges that "up to 1991, the contribution to housing stock through institutional agencies was only 53% (excluding squatter housing)" and therefore, "50-55% of all new housing built must be for the urban poor" and be appropriately sized between "25 to 40 sq m" (2007: 44). The Plan creates two new sub-cities to meet the housing shortfall that will require new housing development – Rohini and Dwarka, together adding up to 20,000 hectares (200 sq km) representing the largest urban extension to planned areas in Delhi since the MPD '62. Whether the housing built in these sub-cities was indeed for the poor is something we will examine later in this chapter.

Parallel to the Master Plan, the JNNURM's Basic Services to the Urban Poor (BSUP), however, makes it possible for a select set of cities including Delhi to provide upgradation of community and environmental services in all 'slums' in the city regardless of their tenurial status or position within the Master Plan. A key trend emerges through this policy paradigm: the de-linking of tenurial rights and upgradation of services in poor settlements. On the one hand, this allows vulnerable communities to receive much needed attention and upgradation of services. On the other, critics argue, it has succeeded in further making it politically and pragmatically difficult to raise the question of the right to secure tenure. Unlike previously, incremental upgradation of services no longer even represents progress towards possible regularisation or legitimacy. It is important to note that the BSUP's one caveat is quite telling – "land cost" in any upgradation or rehabilitation program cannot be covered by JNNURM funds. Land banking or indeed any form of land purchase by the city governments or parastatal agencies, therefore, is ruled out in the understanding of "reform."

The Rise of Civil Society

The MPD '21's emphasis on increased civil society participation was not coincidental. Resident Welfare Associations (RWAs) of middle and upper-middle class neighborhoods in the city had become an increasingly powerful political presence in Delhi since the early 1990s. Empowered particularly by the Delhi government's citizen participation scheme *Bhagidari,*[52] RWAs had become part of everyday governance in Delhi, playing

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[52] See delhigovt.nic.in/bhagi.asp. Accessed April 15th, 2012.

significant roles in activities as far-ranging as deciding on mixed use streets within neighborhoods to monitoring electricity provision and tax collections and controlling and regulating public spaces like neighborhood roads and parks. Two joint federations of RWAs function at the city level today, lobbying the city and central government for a wide set of demands.

These associations critically shape urban politics, particularly on questions of planning, legality, and housing. Many of the public interest litigations that resulted in evictions have been filed by RWAs and indeed social movements see the political rise of this middle class as a key actor for what they see as an "anti-poor" political and economic climate.[53] Benjamin has argued that these associations have been at the forefront of the call for "comprehensive planning" in Indian cities, yet these associations are themselves deeply mired within questions of illegality and the failure of planning as we shall see in our analysis of inhabitation in the city.

THINKING IN CATEGORIES

Let us return to our table of settlement typologies.

Table 1: Settlements in Delhi		
Type of Settlement	**Est. Population in 2000 ('000s)**	**Percentage of Total Population of City**
JJ Clusters	20.72	14.8%
Slum Designated Areas	26.64	19.1
Unauthorized Colonies	7.4	5.3
JJ Resettlement Colonies	17.76	12.7
Rural Villages	7.4	5.3
Regularized-Unauthorized Colonies	17.76	12.7
Urban Villages	8.88	6.4
Planned Colonies	33.08	23.7
Total	139.64	100
Source: Statement 14.4 of the Delhi Economic Survey 2008-09 (Government of Delhi, 2009).		

How do we think about this Table and the categorization it represents? Earlier in this chapter, I argued that, at first sight, this table seems to confirm the failure of planning – what could be a greater indictment of planning than nearly 75% of the city living in housing that is apparently "unplanned"? As we problematise this narrative of 'failure,'

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[53] Personal interviews, including Kalyani Menon-Sen, Dunu Roy and Ishwar Singh.

however, we must ask a different set of questions through which to assess these categories. From the extensive and interdisciplinary literature on how think about classification, three key elements and sets of questions are relevant for our purposes.

The first element is that categories entail choices of what to include and what to leave out. Boundaries must be created, defined and policed for the category to have meaning and be useful. Modern statecraft, argues James Scott, works in part through such simplification – the reduction of "an infinite array of detail to a set of categories that will facilitate summary descriptions, comparisons and aggregation." These "forms of knowledge and manipulation" are particularly characteristic, he says, "of powerful institutions with sharply defined interests" of which state bureaucracies and institutions are emblematic (Scott 1998: 77).These categories, Scott warns, must "collapse or ignore distinctions that might otherwise be relevant" (1998: 81).

It is not just that "other distinctions" between categories are ignored, argues Amartya Sen, but that they are deemed less important, marginalized and deprioritised. Writing about social theories about (in)equality, Sen argues that different frameworks prioritize a different "primary variable" that they use to then compare and construct categories. The need "for ensuring basal equality" in the primary variable, argues Sen, then "necessitates the tolerance of inequality in what are seen as 'outlying perspectives'" (Sen 1992).

From Sen and Scott, we get a set of questions about the construction of categories in our Table: what is the "infinite array of detail" that the categories of our Table reduce? What do they reduce them to? What are the "other distinctions" (or similarities) that are erased? Or, in Sen's terms, what is the primary basis of classification of settlement typologies? What are then the 'outlying perspectives' that it this primary basis allows us to consider marginal or less important?

The second element is that categories are often parts of systems and processes of order and ordering. In her seminal study of ideas of pollution and dirt, Mary Douglas argues that dirt is essentially "disorder" – it is "matter out of place" (Douglas 1966: 35). What are order and disorder? Order implies "restriction," says Douglas, because "from all possible relations a limited set has been used." Disorder, in contrast, "is unlimited, no pattern has been realized in it, but its potential for patterning is indefinite … disorder symbolizes both danger and power" (1966: 94). Categories and the order they are meant to represent must then guard against what Douglas calls anomalies and ambiguities. In culture and through ritual then, "ideas about separating, purifying, demarcating, and punishing transgressions" play this role, a continuous and fragile attempt "to impose system on an inherently untidy experience" (1966: 4).

From Douglas, we get a second set of questions: what is the dirt that this system of settlement typologies is trying to keep at bay? What, in other words, is the disorder? What patterns is this "disorder" capable of and what "danger" does it represent? How does this system of order guard against ambiguity and anomaly – what are its "rituals of separation, purification and punishing transgression?"

The third element we must consider is that categories are generative, not just descriptive. In other words, they create and reproduce, albeit imperfectly and incompletely, what they describe or narrate. For Scott, descriptive categories become "categories that organize people's daily experience precisely because they are embedded in state-created institutions that structure that experience." They are the "authoritative tune to which most of the population must dance" because they can be given "the force of law" (1998: 83). Douglas argues that cultural categories frame experiences just as powerfully. She says that, "public, standardized values of a community, mediate the experience of individuals [by providing] in advance some basic categories, a positive pattern in which ideas and values are tidily ordered" (1966: 39). It is the "public character" of these categories that gives them "authority," which may or may not be enshrined in law.

A third set of questions then arises: how have our housing categories been generative – how have they shaped the built form of the city as well as urban politics? In doing so, how do have they impacted and managed the trajectories, subjectivities and claims of resistance to them, or deviance from them?

BUILT CATEGORIES AND BUILT ENVIRONMENTS: A HISTORY OF AND THROUGH SETTLEMENT TYPOLOGIES IN DELHI

Armed with these sets of questions, I now turn to the analysis of the categories of housing presented in the table above, taking each in turn.

Legal, Formal, Planned, Legitimate: A Clarification on Terms

In the analysis that follows, I use a recognizable but often confusing vocabulary to describe settlements: legal/illegal, formal/informal and planned/unplanned. My use of these terms is strategic. By this I mean that I use them despite knowing their limitations and the lack of clarity in their competing definitions. I do so precisely to make these limitations visible, to highlight implicit and internalized foreclosures, and to show the political work these perform as terms used widely within legal, planning, academic as well as everyday discourse.

Specifically, I use the term "planned" only when it is used by the Table itself, i.e. in describing the "Planned Colony." I limit my use of "legal" to only refer to housing that is recognized by the Plan to the extent that the owners of the house possess some kind of recognized title or ownership that can be registered with local authorities and is recognized by the state. To describe documented transactions of sale and purchase of property or built housing whether or not the resultant titles are legally recognized, I use the term "formal." To describe violations of building norms, developmental controls, and layout plans, regardless of the legality or planning status of the settlement, I again use the twin terms "formal/informal." As I will argue later, this separation in terming the violations of certain norms as "illegal" and others as "informal" is one that emerges from the settlement typologies themselves and has significant implications for settlements and their residents alike.

I introduce one additional term to the above vocabulary: *legitimate.* I use legitimate to describe settlements that enjoy a *de facto* or *de jure* security of tenure. I mean by this that they are protected – either explicitly within the Plan or implicitly in actual urban development practice – from arbitrary eviction. Settlements that are legitimate need not, therefore, derive their legitimacy only from law (although some can and do). They can be formal or informal, legal or illegal, in the sense of the terms described above.

Planned Colonies

The penultimate row of the Table is striking: a category called "planned colonies" that is only one of eight types of housing in the city. Even more intriguing is that these planned colonies housed only 23.7% of the population in 2000. Before addressing what seems like a clear failure of planning, it is important to understand what this category of "planned colony" represents and what it tells us about the "unplanned," particularly in its relationship to the formal, the legal and the legitimate.

Planned colonies are those that are built on plots marked in the development area of the Master Plan, in concordance with the use allocated to that plot in the Master Plan or the Zonal Plan (if it exists),[54] and that are presumably laid out according to norms and standards defined in the Master Plan for design, infrastructure and amenities. There is, however, one more critical element: the temporality of *when* all these conditions were met. A "planned colony" fulfills all of these conditions *at the time that it was built.* It is and has always been planned, legal, and legitimate.

The importance of the category of "planned colony" is in its role as a benchmark. It is the ideal type – the colony that planning imagines as typifying both the norms of the Plan as well as the process for producing housing. The Planned Colony is at the heart of "planned development," a marker of the imagined chronology and synergy between the temporalities of building, inhabiting and planning that is taught in planning schools globally and especially in India: Plan, Service, Build, then Occupy.[55] It is the housing under the Plan's control that is built where, when and how it was intended.

Over time, two types of changes have come about in planned colonies: the extension of individual housing units beyond allowed limits of covered and built area (including extensions into public paths, areas and roads) as well as widespread violations of permitted use, particularly the commercial use of residential premises. It is worth remembering here that the Delhi Master Plans have retained the single use model of zoning imagined in the 1962 Master Plan – implying that almost all mixed use in colonies zoned as "residential" violates Plan guidelines. Successive plans have created layers of exemptions to handle these non-conforming uses. First, they allowed certain kinds of commercial use. Then, individual streets were exempted in otherwise residentially

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[54] Delhi is divided into fifteen zones – eight urban, six rural and Zone 'O' for the riverbed. Zonal plans were introduced under the MPD '21. There are currently sixteen zonal plans prepared for Delhi. Available at http://dda.org.in/planning/zonal_plans.htm . Accessed April 19th, 2012. Most of these plans have been made in the last five years. In 2009, when I began fieldwork, only six zonal plans had been notified. The number rose to 11 by 2011, and upto 15 by April 2012.

[55] See Baross 1987.

zoned colonies. In the MPD '21, nearly 2183 streets across the city were suddenly declared "mixed use" though these were not all by any means within planned colonies alone.

In other words, even within the "Planned Colony," there are layers of unplanned activities and informal uses. The priority given in the settlement typologies has been to the fact that the colony is built on a plot that is marked on and exists in conformity with the layout and design rules of the Master Plan at the time it was built. Within individual units, violations of developmental controls and norms of use as per zoning codes are then akin to the "other distinctions" that Scott argued must be overlooked or Sen's 'outlying perspectives.' The Planned Colony, therefore, is legal, planned and legitimate, but has both formal and informal uses as well as built structures within it.

Planned Colonies and Housing Stock: Looking at the Data

Yet looking more closely at how, when and where planned colonies were built, and more importantly, those that were intended but not built, this ideal type of planned development begins to unravel. Looking at housing data makes two kinds of failures clear: (a) shortfalls in housing built by the DDA or DDA-approved actors that emerge almost immediately after the MPD '62 is issued and proceed to widen till the present day; and (b) the absence of sufficient notified, zoned and development land where planned housing could be built to make up this widening housing shortfall.

Shortfalls in Planned Housing

There is no disagreement in the data that there is a systemic and widening gap between housing needed and that built by the DDA or DDA-approved actors. Estimates of housing shortfalls vary only in the severity of their estimation. Three aspects of the housing shortfall are relevant to our analysis: (a) mistaken population projections and a gross underestimation of housing need in and of itself; (b) the inability to meet even the inadequate housing targets that were set, and (c) the fact that the gap between need and demand, and then between demand and supply, was highest for the poor. Table 2 shows projected population growth for Delhi in the first and second plans and actual population levels. These then further translate these into housing shortfalls.

Table 2a			Table 2b		
Population Projections and Actuals in the Master Plans			**Housing Shortfalls by Plan**		
	Projected	Actual	MPD '62	100,000 dwelling units	
MPD '62 for 1981	4.59mn	6.22 mn	MPD '01	300,000 dwelling units	
MPD '01 for 2001	12mn	13.78mn	MPD '21	400,000 dwelling units	
Source: MPD' 62, '01 and '21; Government of Delhi (2009); Census of India (1981; 1991; 2001)			Source: MPD '62, '01, '21		

Table 3a then shows that the DDA failed to create the housing stock even for the

underestimated need. This 'failure' was particular: it overbuilt middle and higher income housing while substantially under-building housing for what are termed as the Economically Weaker Sections (EWS). Over 88% of housing shortfall is within the EWS category. The reasons for this are clear if one refers to Table 3b which plots the targeted distribution of housing stock by income category in successive Master Plans and the actual distribution that resulted.

Table 3a			Table 3b		
Estimated Shortfalls in Housing			**Housing Stock Allocated vs. Built**		
	Units (mn)	% of Total Shortfall		Intended % of Total Built Housing	Actual % of Total Built Housing
EWS	21.78	88.10%	EWS	40%	30.32
Low Income Group [LIG]	2.89	11.7	Low Income Group [LIG]	30	27.99
Middle Income/High Income Group [MIG/HIG]	0.04	0.2	Middle Income/High Income Group [MIG/HIG]	25	22.94
			Self-Financed Schemes/Other	5	18.76
Source: Ministry of Housing and Urban Poverty Alleviation (undated).			Sources: (TRIPP 2000; Hazards Centre 2003). Indicates housing built on by DDA or DDA-authorized actors including government agencies, co-operative societies. Does not include privately built housing.		

Others have argued that the data itself severely undercounts the extent of bias towards building HIG and MIG flats. The Self-Financing Scheme (or SFS), started by the DDA in the 1970s, was intended to allow families to expedite the construction of their own DDA flat by paying the entire cost in fewer installments. Needless to say, only middle and higher income families, and largely the latter, were able to afford unsubsidized housing and raise the required down payments. SFS housing, argue many, simply adds to the HIG housing stock which implies that 41% of all housing stock built by the DDA was either middle or high income.

The second significant underestimation of the inadequacies of building housing stock for the poor is the definition of the EWS. At the time data in Table 3 was tabulated, EWS housing was defined as families Below the Poverty Line (BPL) making incomes of less than Rs 2100 per month. Low income, or LIG households, earn between Rs 2000-4500 a month. Yet the urban poverty line in Delhi at the time was Rs 420 per month, and 9% of the population was seen to live below the poverty line. The last major central statistical sample in Delhi reported an urban poverty line of Rs 612 in 2004-05, arguing that 15% of the city lived below this monthly income. In 2005, just over 71% of households in Delhi spent less than Rs 2000 as their total Monthly Consumption Expenditure, the proxy used by the National Sample Survey Organisation to measure income classes. The EWS category, therefore, represents no less than 70% of the city's population though it received only 40% of the housing quota. Further, it is likely that a majority of those within the EWS limits, as well, are

closer to the poverty line limits of Rs 612 rather then the EWS upper limit of Rs 2000.[56]

Shortfalls in Planned Areas

The second type of "failure" that becomes evident when looking at why Planned Colonies house only a quarter of the city's population is a shortfall in notifying additional land within the development areas of Master Plan. A planned colony can only be built on land notified within the development area of the Master Plan and zoned residential. Yet no new land was notified as an urban development area by the DDA between 1962 (when the MPD '62 was issued) and 1990 (when the MPD '01 was issued). Though it is true that MPD '62 sought to notify enough land to account for urban expansion up till 1981, this still leaves nearly a decade of urban growth for which no additional land was notified within the Master Plan – a decade in which the city's population increased by 3.2 million people. MPD '01 further added only 4000 hectares to the development area of the MPD '62 – a mere 4.5% of the existing development area in the MPD '62. This extension was the only addition until 2007 when the MPD '21 added 20,000 hectares. In the interim, the city's population had grown by another 6 million people.

This rising population, clearly, could not wait for the Plan to catch-up with the realities of the urban growth and expansion. In 1990, when the MPD '01 was issued, and in 2007, when the MPD '21 was issued, areas far beyond the notified area in the Master Plan were already built up. Both the MPD' 01 and the MPD '21 chose to not to notify already built-up areas as development areas within the Plan. For these colonies built in between plans, it was impossible to be a Planned Colony as they had no way to meet (rather than violate) the basic classificatory principle of the Table: the building of the colony on land marked and zoned residential within the development area.

How then do we understand the "violation" of the Plan? The shortfalls in housing for all categories of residents and the particularly significant shortfall in housing for the poor, implied that planned housing stock was, by any estimation, inadequate. The shortfall of notified developed areas within the Plans and the long durations between successive Plans meant that even building Planned Colonies was impossible. Residents therefore were forced to build shelter in what became, by implication, a range of "unplanned colonies." There was, in a curious sense, then not the violation of the Plan through "illegal" acts, but instead, the impossibility of legal and planned inhabitation for the poor and the rich alike. This impossibility is partly a result of the DDA's inadequate housing production but is, in equal part, the result of its refusal, for example, to include already built-up areas within the development area of the Master Plan. It is the Plan therefore produces and regulates what it itself defines as "illegal" settlements. Illegality then is not outside planning – it is part of its logics, conceptions and practices. What is important to note that this "illegal inhabitation," as I shall argue in the next sections, has defined the processes of inhabitation for the poor and rich alike. The consequences of these illegalities, however, are markedly different for each.

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[56] Poverty figures taken from Government of Delhi 2006 and Government of Delhi 2009

Unauthorized Colonies and Regularised-Unauthorized Colonies

The primary classification principle for building the housing categories is inclusion within the development area of the Plan in a zone marked for residential use. An "unauthorized colony," then, is precisely one that is built on land not included in the development area in the Plan or one built on land within the developmental area but not yet zoned for residential use. Before 1975, most of Delhi's unauthorized colonies fell in the latter category as land acquired under the MPD '62 was not fully developed, i.e. infrastructural services were not provided and the land parcels not notified to be ready for planned housing to be built. Since 1975, however, most unauthorized colonies belong to the former category and fall outside the development area of the Plan – precisely in the built-up areas that the MPD '01 and MPD '21 selectively included or continued to leave out of the development area.

These colonies are on land considered "rural" by the Master Plan at the time they were built – land that, crucially, lay outside developed or even "urbanisable" land as notified by the then relevant Master Plan. Rural land belonged either to individual farmers or was common land in the village and belonged to the *gram sabha,* or village council. An unauthorized colony gets created when land is bought by an individual – let us call him an "aggregator" – from either individual farmers or the *gram sabha* and aggregated into the size of a colony that could be large enough to hold as many 200 units or as few as 10. This aggregated land is then divided into plots (without any specific or standardized norms of layouts, public areas or infrastructure, but often in some relationship to prevalent developmental norms for planned colonies in the Master Plan) and sold with written contractual agreements that detail monthly installments and payment schedules undertaken and completed by individual house owners.[57] Densities, size of dwelling units and layouts vary considerably – Unauthorized Colonies range from working poor neighborhoods to elite single-family homes.

What exactly is unauthorized about the Unauthorized Colony? First, the farmers and the *gram sabha* cannot sell rural land for non-agricultural use – they can only sell to others who will keep the land under agricultural use, ostensibly, to "farmers." Many unauthorized colonies – and in Delhi, the most famous of them all[58] – were thus never called as such by their residents through the 1980s. Their homes were "farmhouses" and many of them claimed to use them for "agriculture," going so far as to conforming to layouts where built structures covered no more than 10% of the total layout on the "farm." Yet many other unauthorized colonies do not even make such pretence and look, for all purposes, like residential layouts with no claims to agriculture.

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[57] Personal Interview with Senior Town Planner, Municipal Corporation of Delhi, Sunil Mehra.
[58] A colony called Sainik Farms has, for nearly two decades, arguably been the best known example of a rich, illegal colony. The government is widely seen as powerless to act against the powerful residents of the colonly. See, for example, "Government admits Sanik Farms Illegal." Available at: http://articles.timesofindia.indiatimes.com/2009-12-04/delhi/28059937_1_affluent-colony-illegal-colonies-unauthorized-colony. Accessed 13th April, 2011.

The violation here is not one of squatting – that the residents of these colonies paid for their land is undisputed. Such payment and the written documents produced therein are proof of a documented and, indeed, formal process of purchase by the buyer. Yet though the purchase is formal, it is not legal. The violation occurs because the farmer and the aggregator did not have the right to sell the land to the house owners in the first place. Housing units within these colonies are thus both with and without 'titles' – though all house owners have formal documents that show detailed payments for their flats, none of these can be registered with the local authorities as recognized, legal property titles because the colony does not exist on the Plan. Titles cannot be legally transferred. Municipal services cannot be provided to these colonies since they do not exist on the Plan.[59]

Many unauthorized colonies therefore were built without regards to design, infrastructure and service standards, and, in fact, often were built without any municipal or public services at all. In the latest official definition of the Unauthorized Colony, it is this aspect of plan violation that the development authorities choose to focus on: "Unauthorized colony" means a colony/ development comprising of contiguous area, where no permission of concerned agency has been obtained for approval of Layout Plan, and/ or building plan." The illegal sale and conversion of rural land for urban use is deemphasized from the history of the colony, focusing only on the need for norms and standards for layouts and service provisions.

Unauthorized Colonies are illegal, both formal (in transaction) and informal (in building codes and developmental norms), unplanned but they are legitimate. There is no recorded case of an eviction of an Unauthorized Colony. Unauthorized colonies do, therefore, enjoy a *de facto* security of tenure if not a *de jure* one.

Periodically an Unauthorized Colony is "regularized." Regularization is a process by which the colony is made *legal* – the property titles are recognized by law and can be registered with the state. The process involves an attempt to align the Unauthorized Colony as closely with planned norms of the settlement layout as well as individual buildings as well as the payment of a one time "conversion charge." However, the colony, once regularized can still not be a Planned Colony – for it was not one at the time of its inception. Its journey to legality, via its time as an Unauthorized Colony, is thus eternally enshrined in its new categorical name: Regularised-Unauthorized Colony, or Regularised Colony, as it is colloquially known. Regularised Colonies are legal, legitimate, must attempt to shift from informal to formal in terms of building and developmental codes as part of the layout process, but are not planned.

Mapping Regularization

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[59] Recent urban policies like JNNURM and the National Urban Sanitation Policy have moved towards providing environmental services regardless of legality of tenure. This has allowed public utilities to legally provide services even in "illegal" settlements.

Why do unauthorized colonies emerge? The previous section detailed the housing shortfalls in planned colonies in Delhi. The sheer inadequacy in housing stock, of land zoned in the developmental area for housing, the inability of many households to wait for allocations of housing stock built directly by the DDA itself are key drivers for the market emerged for the "unauthorized colony." This market was clearly artificially constrained by regulation that allocated insufficient land for housing and then, further, prevented private builders or in fact any one other than the DDA itself or the public agencies and co-operatives it authorized to build housing on the land it did notify. In short, some part of the story of the Unauthorized Colony is partly simply a matter of supply and demand, of what I have called the impossibility of planned and legal housing.

What then is the relationship of the Master Plan with the Unauthorized Colony? It is here that spatial analysis of where unauthorized colonies were built becomes particularly illuminating. Data on where unauthorized colonies exist are hard to come by for both definitional reasons and because of the near absence of systematic surveys. Like in *bastis*, the act of the survey by the authorities of the government represent tricky political moments for unauthorized colonies. One the one hand, surveys are necessary for any possibility of 'regularization.' Yet any surveying sheds light on precisely on the extent of illegal building and makes the colony visible to the authority technically responsible for enforcing the plan and, thereby, taking punitive action against the colony. Periodically, schemes for regularization will be announced and invite applications from Unauthorized Colonies – it is at these moments, then, that it becomes possible to map these colonies.

There are three major waves of "regularization" in Delhi's history. A hundred and two colonies were regularized in the first wave in 1962 itself as part of the first Master Plan. The second wave was in 1975. Map 3 shows 567 unauthorized colonies regularized that existed in 1975, plotting them against the boundaries of MPD '62 that was in force at the time. It is important to note that we have no way, using existing data, to know if more Unauthorized Colonies existed at this point. It is possible that there were many other colonies that were not regularized but existed at this point of time though it is believed that this first wave of "regularization" of these colonies covered most of the existing unauthorized colonies.[60]

What is immediately visible is the colonies lie within urban extensions imagined by the MPD '62 Plan but within areas not zoned or notified for residential use. Yet there is a small cluster to the West, clearly outside the development area of the Plan that has caused a ribbon-effect from the furthest colony to the boundaries of the Plan. These colonies were regularized even as they clearly violated the MPD '62 by being located beyond the urban developmental area. They are then, in our first set of what Douglas would call 'anomalies,' housing that was made legitimate and legal though it violated the primary basis of classification of the Table itself.

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[60] Personal Interviews with AK Jain (Former Director, Planning of the Delhi Development Authority); Sunil Mehra (Senior Town Planner, Municipal Corporation of Delhi) as well as Viresh Bugga (Chief Town Planner, Municipal Corporation of Delhi).

Map 3: The Second Wave of Regularization: 567 Unauthorized Colonies 1975

Regularised Colonies
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Urban Development Area

Rural
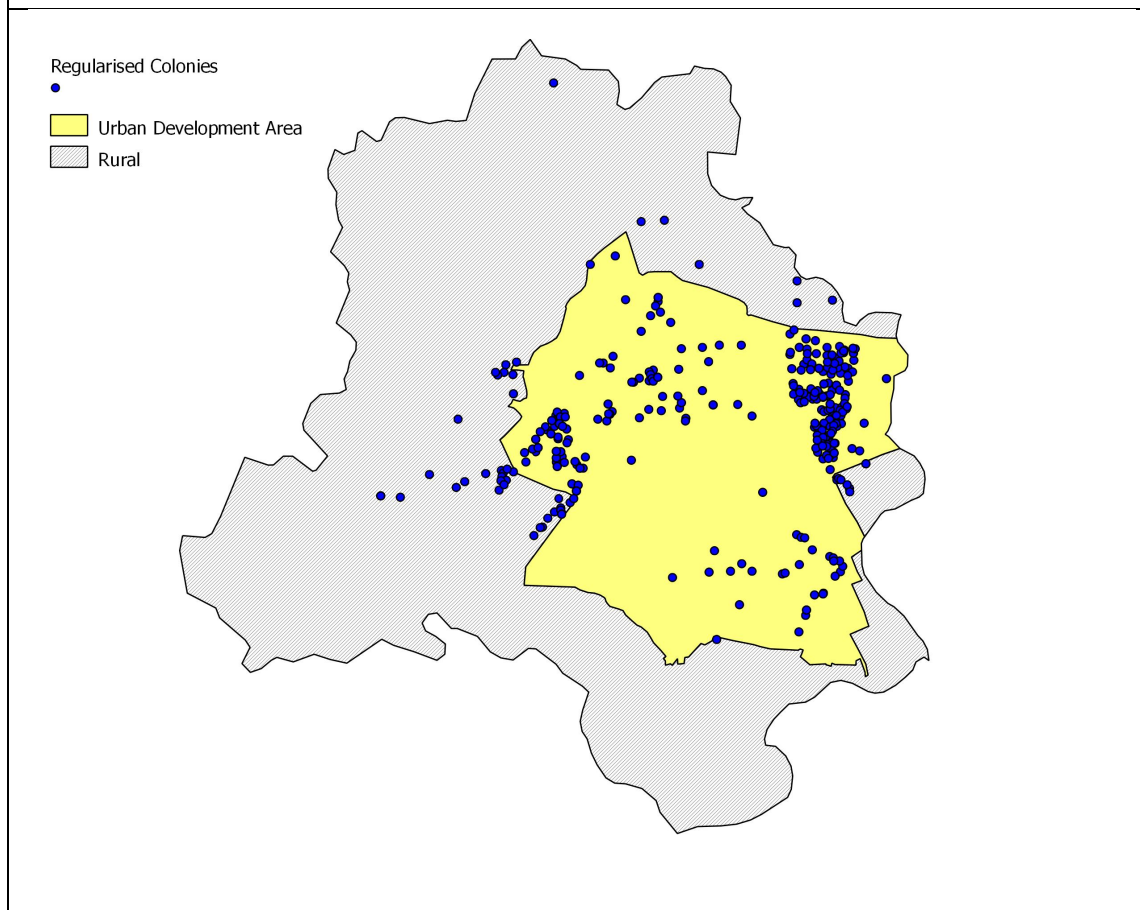
This contradiction – where the creator of the system of categories itself violates the primary principle of classification of the categories – repeats itself decades later. In 1993, applications were invited from unauthorized colonies as part of a regularization scheme. A total of 1639 colonies applied. In their applications, each colony submitted a layout plan, mapping precisely the boundaries of the colony, the number of units and location. Using this data, Map 4a maps these colonies against MPD '01 which had been issued just a few years before the regularization scheme was announced while Map 4b shows where these colonies exist and maps them against MPD'62. Map 5a then maps these same colonies against the MPD '21.

Map 4a: The Third Wave: 1639 Unauthorized Colonies in 1993 mapped against MPD '01
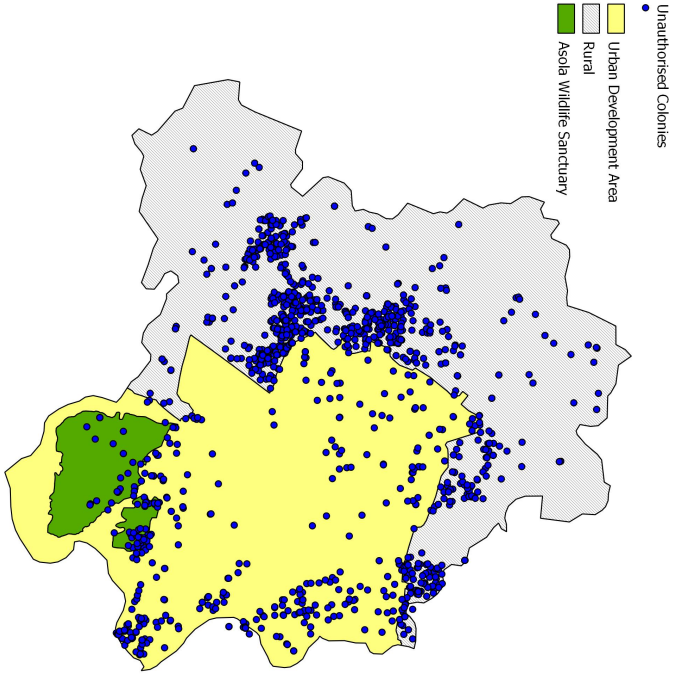
Unauthorised Colonies
Urban Development Area
Rural
Asola Wildlife Sanctuary

Map 4b: The Third Wave: 1639 Unauthorized Colonies in 1993 mapped against MPD '62

Unauthorised Colonies
Urban Development Area
Rural
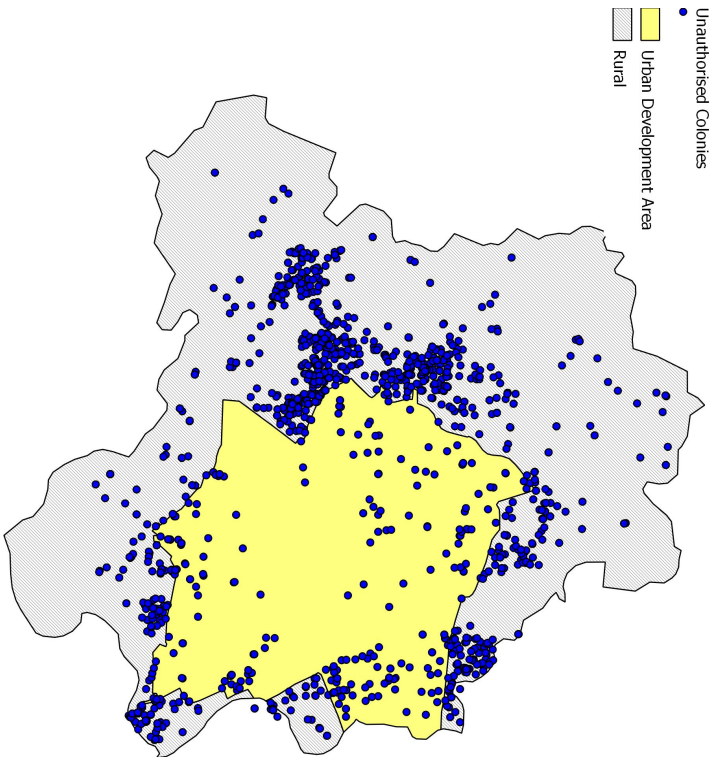
A clear spatial pattern is immediately visible. The largest clusters of unauthorized colonies clearly do populate areas just beyond the developmental areas of the Plan, i.e. areas still considered "rural" or "urbanisable." In this sense, the Unauthorized Colony marks the immediate "outside" of the Master Plan. Yet what is striking is that, even in 1993, these colonies are largely outside the plan boundaries of the MPD '62! When plotted against MPD '01, a relatively small number in the southern extension enter the development area. The DMP '62 remains, therefore, even in 1993, a boundary to the planned city. The Master Plans here clearly act as a *bounding condition*. The spatial pattern of where unauthorized colonies are built, therefore, is not planned but is determined by planning – the clustering of unauthorized colonies at the edge of the development area is not incidental. There is then, in Douglas' words, a very particular "pattern within the disorder." We shall to this argument in more detail later in the chapter.

In 2009, nearly a decade and a half after the colonies had applied for regularization, 733 of these colonies were regularized in what is considered the third major wave of regularization. Map 5b shows the reg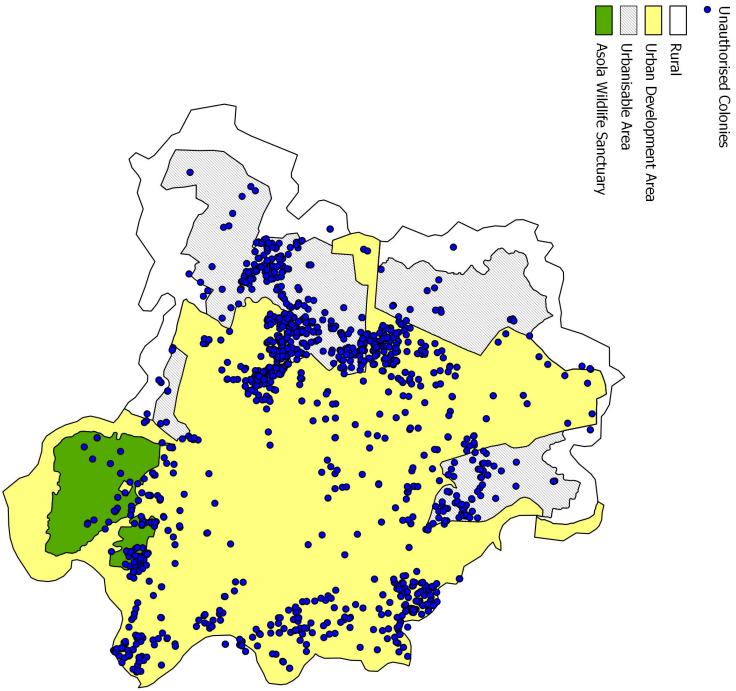ularized colonies within the universe of all the unauthorized colonies that applied, mapped against the MPD' 2021 that had been issued just a few years earlier in 2007. The maps allow us to see another aspect of the relationship of the Plan to both unauthorized colonies and regularization. The DMP' 21 had been issued in 2007 itself, and clearly knew of the existence of these colonies given their applications to be regularized. Yet, as Map 5b shows, the DMP '21 stops short of extending the development area to include many (indeed, most) of the unauthorized colonies which remain in what the DMP '21 terms as "urbanisable area" though it is clearly built-up and occupied. What is particularly important is that many of these colonies that lie in this "urbanisable area" are then regularized in 2009 though just as many aren't. Yet again, a colony is made legitimate and legal but in violation of the primary principle that the idea of the Planned Colony represents: the building of a colony on the development area of the Plan in a zone marked residential.

Another question arises: why did only 733 colonies get regularized and not the remaining 906? What explains, between two neighbouring colonies, which will remain Unauthorized? In the absence of objective metrics by which the regularization process functions, it is indeed the discretion of the DDA to decide who will become legal and who will remain illegal, at what time and for how long. Once again, it is the Plans, and not the failure of their implementation, that produce and regulate illegality. They determine, through their discretionary ability to notify or not notify parts of the city within the development area, as well as through waves of "Regularization" that include certain colonies but not others, which settlements will be legal and which illegal, which will thrive and which will not be allowed to exist. The production and regulation of illegality is part of, and not outside, planning and planned development. It is a technique of rule, what Roy calls a "a spatial mode of governance" (Roy 2003).

Map 5a: The Third Wave: 1639 Unauthorized Colonies Applying for Regularization, mapped against MPD '21

Unauthorised Colonies

Rural
Urban Development Area
Urbanisable Area
Asola Wildlife Sanctuary

Map 5b: The Third Wave: Regularised Colonies in 2009, mapped against MPD '21

Regularised Colonies
Unauthorised Colonies

Rural
Urban Development Area
Urbanisable Area
Asola Wildlife Sanctuary
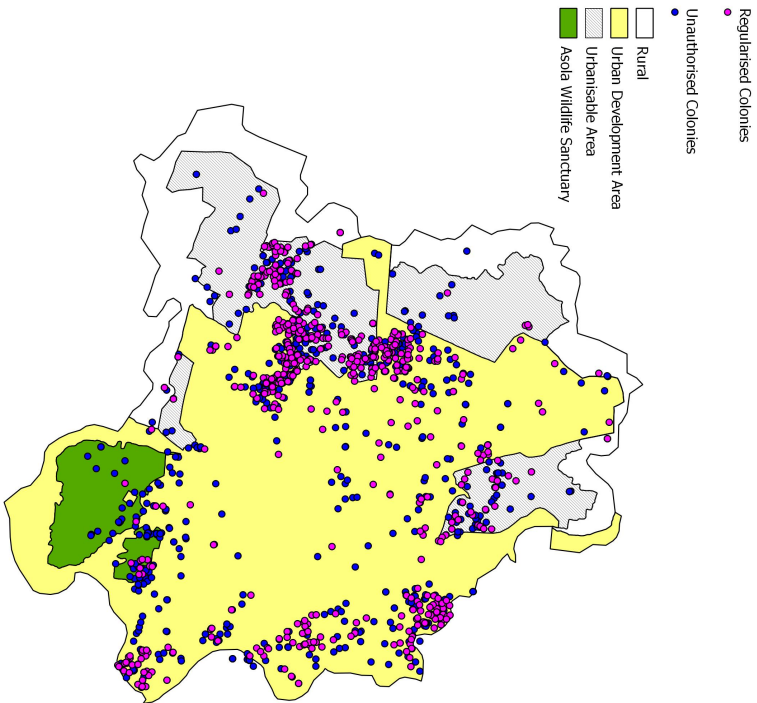
Urban and Rural Villages

Urban and rural villages offer a further twist on our understanding of planned, formal and legal. Urban villages are dense settlements, located throughout the city, which largely consist of previously rural villages that have been incorporated into urban areas as the city expanded. Twenty such villages were included in the MPD '62, 106 in MPD' 01 and 152 in MPD' 21. Rural villages are similar settlements but located in the peripheries of the city and still in areas of the Master Plan marked as "rural."

In one sense, urban and rural villages are planned since they are included explicitly within the Master Plan. This incorporation, however, is on the basis of exceptions: a suspension of the norms and rules of planning. In order to be able to "retain their character," urban villages are exempt from any building norms, mixed use or single use zoning classifications, or restrictions from any kind of use. In other words, urban villages may build to any height, mix commercial and residential activities, violate developmental controls for setbacks, parking, and street widths. All of these were considered "inapplicable" to urban villages because they were meant to be the locus of "village-trades" that the MPD '62 sought to remove from the planned city.

Urban villages today range from poor neighborhoods still practicing "village trades" including pottery, leather kilns and rearing of cattle to working class neighborhoods providing student housing to some of the cities most chic fashion and arts districts. They take advantage precisely of their status of exemption from planning and developmental controls to create vibrant mixed-use neighborhoods. What is ironic about urban villages is that activities that would be considered informal in any other city neighborhood are permissible in urban villages. The villages are legitimate: residents enjoy security of tenure and cannot be evicted. However, residents of urban villages are meant to be owner-occupiers in perpetuity – no sale or transfer of land or housing is permitted. They are thus legal, in the sense that their property titles are recognized by the state, but within their exceptional status are limitations to their legal property rights. Urban and Rural Villages are, therefore, formal in name though not practice, legitimate, planned by decree of exception and legal though with limitations.

JJ Clusters, Slum Designated Areas and Resettlement Colonies

Images of the "slum" need little introduction. Temporary, fragile and vulnerable housing materials, the absence of sanitation, waste, and sewage services, the poverty of the residents, the overwhelming density of the "slum" can be conjured up by even those that have never actually been to one. As argued earlier, I used the term *basti (*in plural, *bastis*) to refer to the settlements of the poor for which the "slum" has become shorthand. Yet what is colloquially called the *basti* by those who live within it is, in terms of our categories, seen as three distinct categories of settlement: Slum Designated Areas, *Jhuggi-Jhopdi* Clusters (JJ Clusters),[61] or Resettlement Colonies.

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[61] In Hindi, *jhuggi-jhompri* refers to temporary, fragile housing shacks typically made of temporary materials like tarp or thatch, though its use can be more general and just refer to poor settlements. Along with *basti,* it is the closest translation of the everyday use of the English word "slum."

Slum Designated Areas

Slums are settlements identified, or "notified," under the Slum Areas Act, 1956. Slums were considered "any area unfit for human habitation" by reason of "dilapidation, overcrowding, faulty arrangement and design of buildings, narrowness or faulty arrangements of streets, lack of ventilation, light or sanitation facilities, or any combination of above factors." Yet no measurable parameters were included in the definition leading to a discretionary rater than objective assessment of which areas would be declared as slums.

This is evident in looking at areas notified as slums under the Act. The last notification under the Act in Delhi was in 1994 – no new slum has been acknowledged under the Act in the last sixteen years! In fact, most of the Slum Designated Areas in Delhi exist in the Old City – the walled city of Shahjahanabad that was notified as a Slum in the MPD '62. Since then, it has been reclassified first as a heritage zone and in the MPD '01 as a "Special Area" though many parts of it remain notified as a slum in addition to being both a heritage zone and a "special area." What is critical to note is that 97% of notified *katras*, or small neighborhoods, in the Old City areas notified as slums are privately owned and have been so since before Independence and the MPD '62. There are almost no notified slums, therefore, on public land.

Slum Designated Areas are often referred to as Notified Slums, as opposed to *JJ Clusters*. Notification entitles settlements to an element of protection against arbitrary eviction, or eviction without resettlement, and priorities in upgrading. Indeed, several schemes in the 1970s, including the Environmental Improvement in Urban Slums policy, were restricted to notified slums though incremental upgradation policies from the mid-1980s disbanded this practice. Slum-designated Areas are then legal but with restrictions, legitimate, unplanned, and both formal and informal.

JJ Clusters

JJ Clusters are *bastis* that have not been declared slums by notification under the Slum Areas Act and that are imagined to retain the physical fragility and deprivation of the slum. Ironically, there is little clarity on what makes a community a "JJ Cluster" – there are no strict metrics of infrastructural services, income, or spatial layouts, for example, to determine whether a settlement is or is not a JJ Cluster. The National Sample Survey Organization describes a "non-notified slum" as "a compact settlement with a collection of poorly built tenements, mostly of temporary nature, crowded together usually with inadequate sanitary and drinking water facilities in unhygienic conditions."[62] Yet what is important to note is that unlike a notification under the Slum Areas Act for which a denotification exists, there is no mechanism for a settlement to cease to be a JJ Cluster. There is no metric of density, services or income that they can clear, for example, that will make the surveyors of the NSSO stop including the settlement in the

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[62] See http://mospi.nic.in/Mospi_New/site/home.aspx. Accessed April 19th, 2012.

category of slum. This is one reason why actual JJ Clusters vary widely in infrastructural standards, quality of housing and even layouts of settlements.

The categorization process ensures that once a settlement is seen as a JJ Cluster, it remains so in perpetuity. One of the reasons behind this curious practice is that the primary classification principle of our categories is not, in fact, the quality of housing but instead, as I have argued repeatedly, the status of the land the settlement is built on vis-à-vis the Master Plan. These are planning categories. Whether the quality of the housing stock in a JJ Cluster is better or worse than that of an Unauthorized Colony, a Planned Colony or a Regularised Colony, let alone a Slum Designated Area, is then seen as irrelevant. The definitional manipulations and naming practices of the categories of settlements, as I shall argue in detail in the concluding section of this chapter, are techniques of rule, exercised in the name of and as part of planning practice. They are critical in determining the distance between the legitimate and the legal. In other words, they are part of the calculus – beyond the state and its attempts at governance – that determine whether a legal or illegal colony is legitimate or not, i.e. if it can enjoy a *de facto* security of tenure.

What separates a JJ Cluster and an Unauthorized Colony? The focus of the categorical definition, therefore, to bring back Sen's understanding of the primary principle of classification of the category, remains that residents of *bastis* are seen to be "squatting" on land they neither own, nor paid for. In Delhi, 95% of JJ Clusters[63] are on public land, and the large majority (83%) of them on land owned by the Delhi Development Authority.[64] It is this that is seen to make their illegality clear – the land they occupy has a clear owner. Unlike in the case of Unauthorized Colonies where residents did not have the right to buy rural or private land but the sale itself is seen as a formal, valid transaction, payments made by some residents of *bastis* to "buy" their plots or at least the right to remain on them, are seen as clearly and unambiguously informal. The "aggregator" who creates the Unauthorized Colony in this case becomes the "Slum Lord" for precisely the same set of actions: occupying land, parceling it, and allowing families to settle in defined and marked parcels for a fee. The JJ Cluster, therefore, is unplanned, illegal, informal and not legitimate.

Resettlement Colonies

The only way for residents of JJ Clusters to become legitimate is, ironically, to be evicted from the JJ Cluster and resettled into an alternative site, called a Resettlement Colony.

Terms of resettlement have shifted through the three Plans. From plot sizes of 80 sq m in the MPD '62 to 25 and 18 sq m in MPD' 01, and back to 25 sq m in MPD' 21. Eligibility criteria have also changed dramatically. I argued earlier that displacement without resettlement was "not an option" in the 1960s when the first wave of resettlement took place. Within and after the Emergency, however, resettlement shifted

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[63] Estimates range from 95-98%.
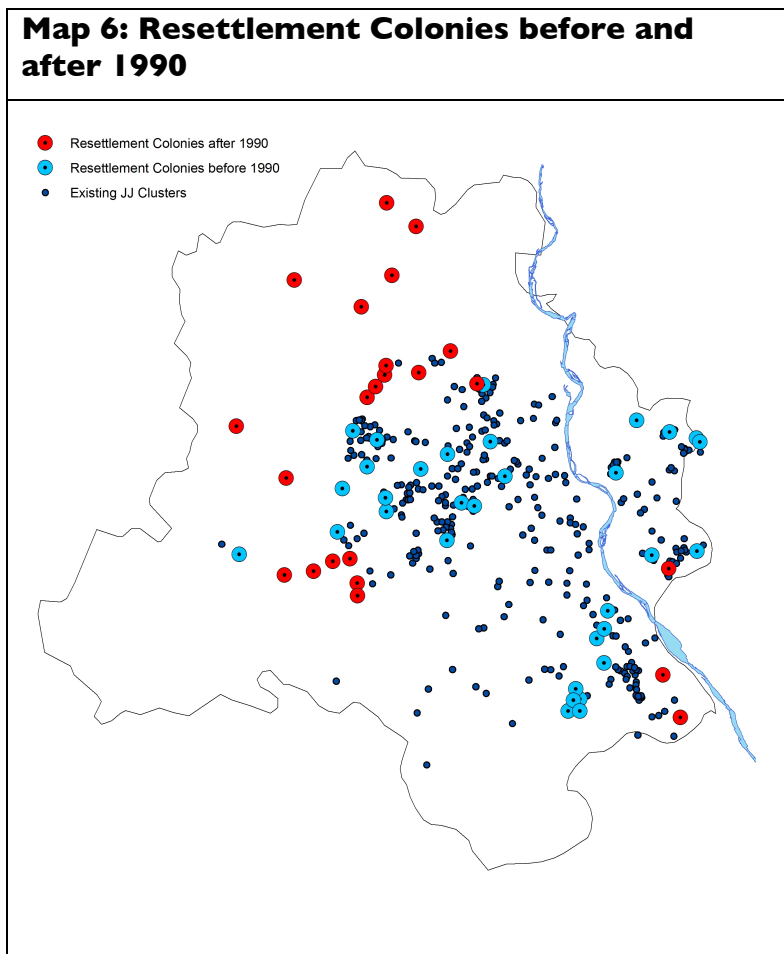[64] See Government of Delhi 2009

from being universal to being conditional. Renters were excluded and only plot "owners" were allowed even though the ownership of the latter had no legal recognition. Down payments were demanded before families would be allocated plots and, most importantly, only families that could prove that they had been living in a particular site for a certain number of years were eligible. The year chosen was determined as the cut-off date. In evictions from 1990-2007, estimates of the number of families resettled averaged only about 25-40% of total families at any given site. This offers a further insight into JJ Clusters – the only claim to legitimacy that residents of JJ Clusters have is the number of years that have lived in a particular settlement.

Resettlement Colonies, ironically, are the closest category to planned housing. They are planned in the sense that they are explicitly included within the development area of the Master Plan in a zoned marked for residential use, laid out according to standards and norms for resettlement colonies in the Master Plan and, critically, they fulfill all these conditions at the time they were built. In other words, they are the only other housing category that fulfills all the benchmark conditions of Planned Colonies. The only difference lies in the nature of the title. Families allocated plots in resettlement colonies are imagined as eternal owner-occupiers. They are given licenses rather than titles that are non-transferable, cannot be sold or gifted, and indeed, are often not in perpetuity – licenses have to be renewed every ten years or so. Though there has been no recorded case thus far of licenses not being renewed, the possibility remains. Resettlement Colonies are then planned, formal, legitimate as well as legal, though with restrictions on the last count.

What separates Slum Designated Areas, JJ Clusters and Resettlement Colonies? The only tenable criteria of difference is their tenurial status and their relationship to the Master Plan. Slum Designated Areas are protected from arbitrary eviction without resettlement and thereby enjoy a certain *de facto* security of tenure though not a *de jure* one. JJ Clusters have no security of tenure at all; resettlement colonies are authorized by the Master Plan but offer security of tenure only to the original allottees of the plot – titles are non-transferable and rentals are illegal though they occur widely in practice. Studies estimate that between 15-40% of all resettlement colonies are inhabited by renters or those that have illegally and informally 'purchased' a plot in the colony from the original allottee. Cancellations of allotments and "recovery" of plots from within Resettlement Colonies is, therefore, not uncommon.

What is important to emphasize is that distinctions between these three categories are impossible to make in terms of either their built environment, housing stock, or of the poverty levels of their residents. Many resettlement colonies are inhabited by residents who may be legal but are poorer and live in housing stock that is more fragile, built of temporary materials and are economically more disadvantaged than those that live in tenurially more precarious JJ Clusters. Resettlement colonies have often, in fact, been called "planned slums" by activists who argue that it is impossible to create anything other than a "slum" in recent resettlement colonies because of the diminishing size of the plots, the distance from employment and work centers and the abysmal state of infrastructural services.

There are, of course, widespread differences between resettlement colonies depending on when they were built and many older resettlement colonies are arguably better off than many JJ Clusters though for many JJ Clusters that have existed for many years, even decades, incremental upgradation even without tenure has resulted in a much improved quality of life than in many more formal, legal settlements. A significant part of this distinction is because of the relative locations of these two categories of settlements. As Map 6 shows, resettlement colonies are increasingly located more and more towards urban peripheries while JJ Clusters remain closer to the heart of the cities. Locational advantages, therefore, can significantly outweigh the benefits of legality in determining the economic development of a settlement.[65] There can be, in other words, no simple correlation between tenurial security or a settlement, its legal or planned status vis-à-vis the Master Plan and its poverty and vulnerability. Put quite simply: not all *bastis* are poor, not all of the poor live in *bastis.*

Map 6: Resettlement Colonies before and after 1990

Resettlement Colonies after 1990
Resettlement Colonies before 1990
Existing JJ Clusters

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[65] See Dupont 2008, Bhan and Menon-Sen 2008.

The Long Story Short: "Planned and Unplanned Colonies"

	In the Master Plan?	Conform to Developmental Controls?	Titles?	Formal, Legal, Planned and Legitimate?
JJ Clusters	No	No	No	Informal, illegal, unplanned and without legitimacy
Slum Designated Areas	Yes	Exempted	No Yes, but restrictions on sale	Formal by exception, Legal with restrictions, Unplanned but Legitimate
Resettlement Colonies	Yes	Yes	Yes, but restrictions on sale	Formal, Legal, Legitimate and Planned, but restrictions on sale, transfer and rental
Unauthorized Colonies	No	No Modifications	No	Informal for building codes, Formal for process of purchase, Illegal and Unplanned but Legitimate
Regularised Colonies	Yes	required	Yes	Informal for building codes, Legal and legitimate but unplanned
Urban Villages	Yes	Exempted	Yes, but restrictions on sale Yes, but restrictions on sale; No titles for Common land	Zones of exception – Planned by exemption, legitimate and legal though with limited rights to property, formal by exemption
Rural Villages	Yes	Exempted		Zone of exception – Planned by exemption, Legitimate and legal though with limited rights to property, Formal by exemption
Planned Colonies	Yes	Yes	Yes	Formal, Legal, Legitimate and Planned

MAPPING *BASTIS* AND EVICTIONS 1990-2007

Understanding the Data: Sources, Methods and Limitations

Data used to map evictions and resettlement, as well as existing JJ Clusters, Slums and Resettlement Colonies, was sourced from a variety of public agencies. Three lists were combined to make the maps below: a list made in by the Department of Food and Supplies in the Municipal Corporation, another by the Slum & JJ Department of the Municipal Corporation and a third by the newly formed Delhi Urban Shelter Improvement Board (DUSIB).

How Accurate are the Estimates?

There are two data sets used in this section: the first maps evictions and the second existing JJ Clusters. I take each in turn, starting with the data on existing JJ Clusters.

The data on existing JJ Clusters is 2010 data from the newly formed Delhi Urban Shelter Improvement Board, or DUSIB, based on surveys carried out throughout 2009. DUSIB, since its formation in 2009, is now the singular authority responsible for slum housing, upgradation and resettlement in Delhi. Their data is the only systemic survey of existing JJ Clusters undertaken or commissioned by a public agency and hence represents the most accurate data available. No reasonable or evident bias exists in the data as far as we know – it is meant to be comprehensive and cover all JJ Clusters in the city.

The data on evictions is less certain. The first limitation of this data is that it is data on resettlement, not evictions. This means that the lists give information about how many households were resettled from different eviction sites. They provide a name and location of the eviction site, the name of the resettlement colony where some of the evicted families were sent as well as the year in which they were sent. What they do not tell us, however, is how many households existed in the original JJ Clusters. In other words, if we know that 230 households were evicted from X JJ Cluster to Y Resettlement colony, we still do not know how many households were evicted but not resettled. This also means that if entire sites were evicted without any resettlement, then these sites will not appear on any of our lists. This implies the possibility of an undercounting of evictions in the data. How large is this possible undercounting? It is nearly impossible to tell – there are no systematic surveys of eviction to compare it with. This does imply that we cannot make definitive conclusions about evictions using this data set, but merely indicate trends from what is certainly a minimum set of evictions in the city.

Three considerations support using this data for analysis despite its limitations. The first is that it is the data used by public authorities. Across the Delhi Economic Survey, the Master and Zonal Plans, the City Development Plan under the JNNURM, or any of the other urban planning and governance reports, it is these data that are the basis of policy formulation. Even if limited, it is important to engage with these data on their own terms.

The second consideration is that it is because slums in Delhi are nearly universally on public land the executing agency for evictions in the time period under consideration has been a single agency: the Slum and JJ Department of the Municipal Corporation of Delhi. This means that no matter the land owning agency on whose land the evicted *basti* stood, it is the Slum and JJ Department who executes the eviction. Its own record of evictions, therefore, is perhaps as close to an accurate record as is possible. There is no evidence – even anecdotal – of privatized evictions in Delhi, making data from public sources the most accurate and appropriate to use.

The third is that even if the data does not fully capture evictions, it certainly accurately represents the universe of resettlement precisely because only public agencies provide and undertake resettlement – there is no case of private resettlement colonies being built in Delhi. In other words, the data is a comprehensive sample of JJ Clusters that received some form of resettlement between 1990-2007, allowing us to draw definitive conclusions about resettlement is not with the same certainty about all evictions.

Verifying Locations
A limitation in the data that was overcome was a lack of any standardization in how JJ Clusters were named and the level of detail in their location. Often, a JJ Cluster would be listed as being, for e.g. on "Masjid Road," which is a 5km road in the Eastern Part of the city. At this level of information, it is impossible to plot an eviction site. Names were also not exactly consistent across the two lists that named eviction and resettlement sites, making an accurate reconciliation of the lists impossible. To overcome this limitation, the 217 eviction sites, therefore, had to be physically verified.

How does one find and map a *basti* that no longer exists? Using the lists as our guides, an initial mapping of 217 eviction sites was done using GIS software and Google Earth. Over a period of two months, each of these sites was then visited by a research team of four surveyors. Once at the approximate location of the site, the team relied on the recall of local residents to accurately find the site where the *basti* had stood. For each site, several informants were asked in order to be certain of the location. Once the site was exactly identified, its geo-spatial location was recorded using a GPS device and a photograph was taken to record current use of the land. We found, in this process, a remarkably clear and certain recall of *basti* locations and were able to accurately map the location of the settlements. We did not try and map the boundaries of the settlement as it was not necessary for our analysis.

Evictions 1990-2007

In the Introduction, I described in detail the dramatic rise in the extent, frequency, scale and intensity of evictions between 1990 and 2007. Map 7 shows the 217 sites where evictions occurred between 1990-2007 and some resettlement took place. What is apparent even at first glance is the white space on the map. The eviction sites clearly cluster to an area in the Centre, East, and South/Southeast of the city. The North, Northwest and Western parts of the cities are conspicuously blank. What explains this geographical clustering? It is when we put the plan back into the map that a possible answer emerges. Map 8 shows the eviction sites as mapped against the development area of the Delhi MPD '62. Remarkably, nearly all the eviction sites, even four decades later, fall within the bounds of MPD '62

Map 7: Evictions 1990-2007
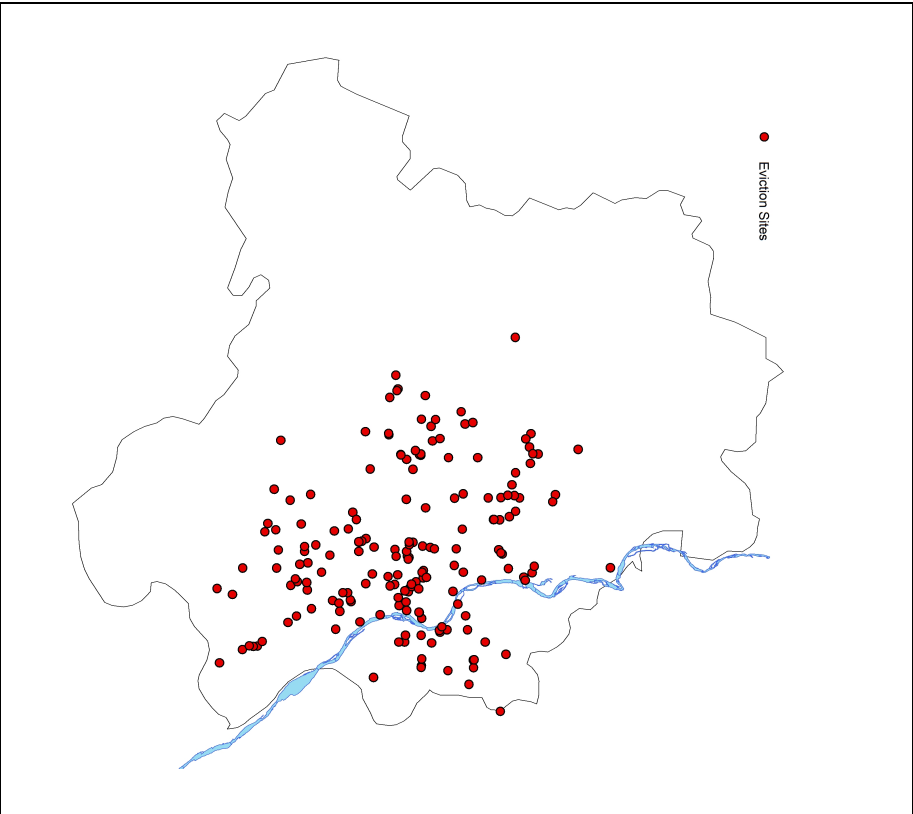
Eviction Sites •

Map 8: Evictions 1990-2007 mapped against MPD '62

• Eviction Sites

Urban Development Area

Rural
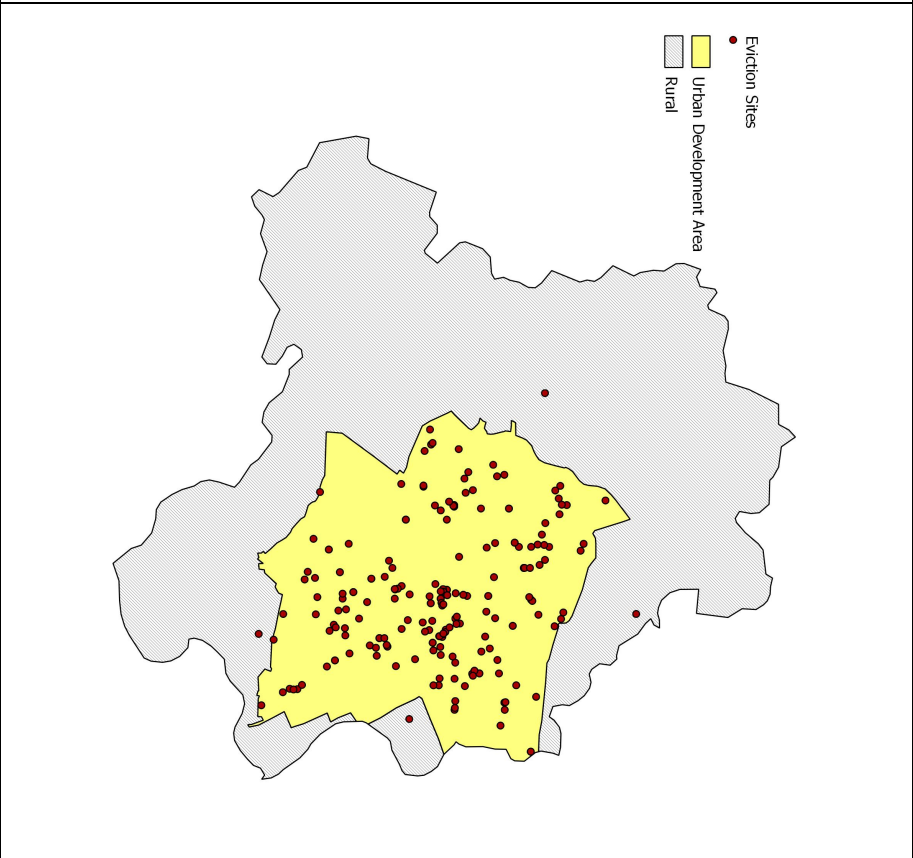
Yet that is not the complete story. If we add a third layer to our maps – that of existing JJ Clusters that have not been evicted – we see another rather unexpected observation (see Map 9). Nearly all the existing JJ Clusters also fall within or just on the border of the MPD '62. Put together, this implies that the settlements of the poor – those that exist and those evicted – display a particular spatial pattern of settlement that is determined by the MPD '62. The Plan acts, as it did for Unauthorised Colonies, as a *bounding condition*. This time, it acts as another kind of boundary: one that seems to hold the settlements of the poor within the centre of the city. It is worth remembering here that this centre represents a particular urban footprint – the public lands acquired as part of the Delhi Experiment.

Map 9: Evictions 1990-2007 and existing JJ Clusters (2010) mapped against MPD '62
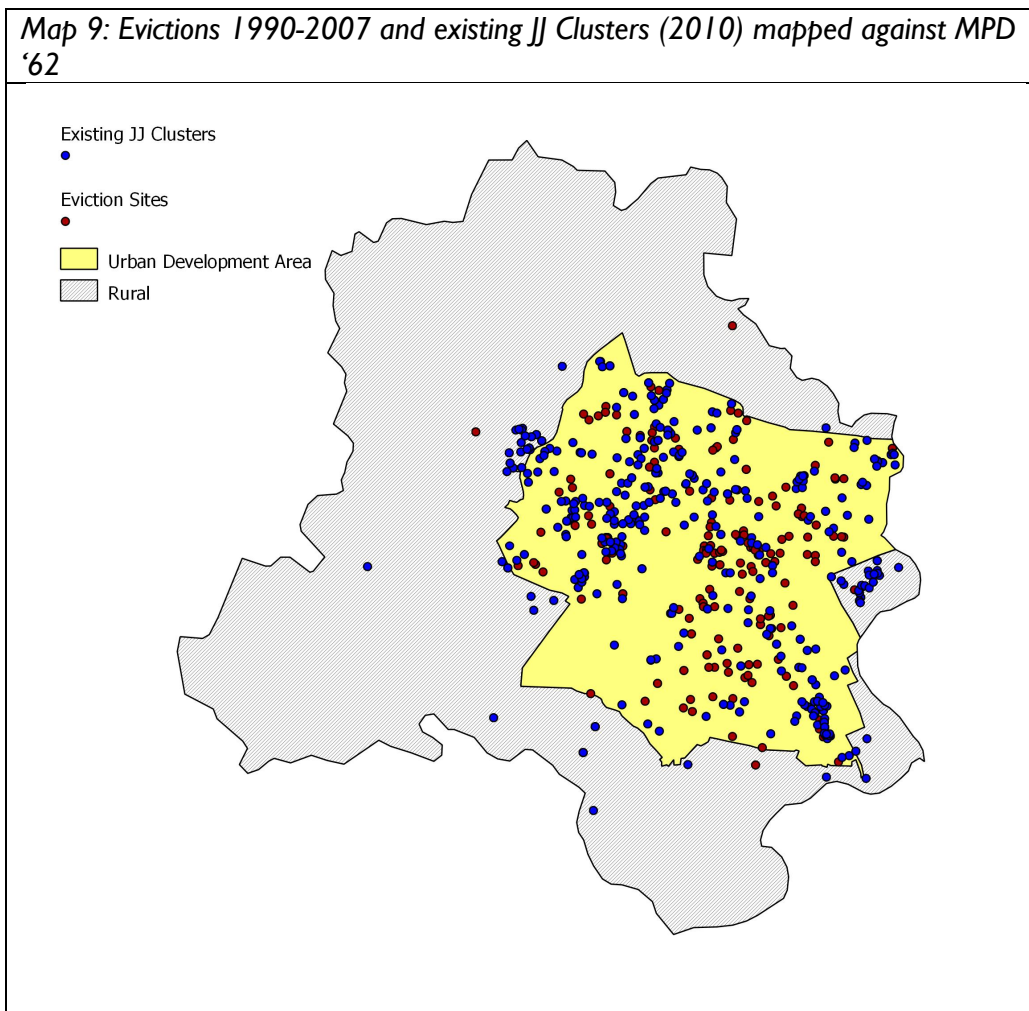
Bastis have been seen to be the single most visible and uncontested sign of the failure of planning. Yet what is clear is that, like Unauthorised Colonies, *bastis* may not be planned, but their spatial patterns and locations are determined by planning. How do we understand this clear presence of the Master Plan in the very constitution and production of settlements that are assessed as unplanned, illegal, informal and illegitimate or, in other words, those that are presumed to exist beyond, outside, despite or in violation of the Plan? What does this tell us about the "failure" of planning,

or narratives of its absence in shaping and settling the city? Importantly, why do *bastis* cluster not just around the development area of the 1962 Master Plan in particular – the exact footprints, in other words, of the Delhi Experiment? It is to these questions that I now turn in the concluding section of this chapter.

Diagnosing Failure

Michel Foucault readily admitted that nothing happens as laid down in programmers schemes. Yet he insisted that they are not simply utopias "in the heads of a few projectors." They are not "abortive schemas for the creation of a reality" but "fragments of reality" itself. They "induce a whole series of effects in the real" ((Foucault 1991 [1980]): 81). Planning in Delhi has indeed had a "series of effects in the real," particularly for the poor. These effects are spatial, social and political. They influence the built form of the city, mediate urban politics and governance as well as impact regimes of belonging and citizenship. They transcend and challenge conventional understandings of the dichotomies of planned-unplanned, formal-informal and legal-illegal. They challenge simple diagnoses of the failure and irrelevance of planning in Indian cities. They argue, most importantly, that Planning remains a site that is critical for urban politics to engage with, especially a politics that seeks to foreground concerns of inclusion, equity and the right to the city.

My intention here is not to argue for the power of Planning, to advocate for 'better,' 'inclusive' or 'participatory' Plans, to restore modernist or techno-phantasmic dreams of more effective implementation or control, or even to disagree with the varied diagnosis of the failures of planning in Indian cities. Instead, I argue only that urban practitioners in a city like Delhi have no choice but to engage with the Plan because precisely of the continuing relevance of its failures. The "chaos that is urban development" that Verma (2002) describes is not planned but it is, to twist Peattie's phrase, an outcome of planning. Looking at planning's failures allows us to find what I am calling the *traces of planning* – its legacies both historical and contemporary and its presence in the contemporary city, either in absence or presence, in failure or success. Plans do not control but they influence, determine and limit. Within housing in Delhi, planning plays three key roles: (a) determining spatial patterns even in cities that are "unplanned" and "chaotic"; (b) producing and regulating illegality; and (c) creating categories that become the basis of a socio-spatial urban order that deeply impacts regimes of belonging and citizenship. I turn to each of these below.

The Territorial Legitimacy of the Irrelevant Plan

Re-evaluating the Delhi Experiment

The Delhi Experiment – the large-scale acquisition of urban land in the MPD '62—has been largely seen as a "failure." It is argued that the experiment failed in its primary objectives: to prevent the spatial segregation of the poor and to prevent speculation and vast inequalities in land and housing markets. The land acquisition, particularly because it was not accompanied by corresponding large-scale housing development, is seen to have distorted the land market. These are certainly legitimate critiques. Yet the data presents

another side to thinking about how to evaluate the Delhi experiment and, indeed, the impact of public land ownership on housing for the poor.

The data shows that while most housing is built illegally and termed "unplanned," where it is built, i.e. the spatial patterns of the location of different kinds of housing, is indeed significantly determined by the MPD '62. The plan acts as a *bounding condition* – it determines, even if it doesn't control, where housing has been built. Two clear example of this have been shown. As Maps 5a shows, the largest clusters of Unauthorized Colonies populate areas just beyond the development areas of the first two Master Plans. In this sense, the Unauthorized Colony marks the immediate "outside" of the Master Plan. Yet what is striking is that, even in 1993, these colonies are largely outside the plan boundaries of the MPD '62! When plotted against MPD '01, a relatively small number in the southern extension enter the development area. The DMP '62 remains, therefore, even in 1993, a boundary to the planned city. The spatial pattern of where unauthorized colonies are built, therefore, is not planned but is determined by planning – the clustering of unauthorized colonies at the edge of the development area is not incidental.

Map 9 similarly showed us that almost all evictions where some resettlement occurred and all existing JJ Clusters are located within the development area of the MPD '62. Plans see *bastis* as the result of an absence or incompleteness of planning –the result of "unplanned and unregulated urban growth" (Swamy, Bhaskara Rao et al. 2008). They are settlements assumed to be entirely divorced from planning or that exist despite or outside Plans. Yet what is clear from the data is that planning determines where *bastis* have been built. The locational preferences of the urban poor are not independent of an irrelevant or absent Plan – *bastis* are not "outside" planning even within the context of a "failed" Plan. In the context of Delhi, specifically, *bastis* are tied to planning in a particular way – their locational patterns are determined by public land ownership.

There is then, in Douglas' words, a very particular "pattern within the disorder." The pattern suggests a relationship not just between Master Plans and housing but, in particular, between the MPD '62 and spatial patterns of "illegal housing." Since the MPD' 62 is also the site of the Delhi Experiment, this pattern is a relationship between public land ownership and the settling patterns of the poor. Indeed it is a pattern that, for the poor, is arguably a beneficial one: a large number of *bastis* still remain in the centre of the city as imagined by the MPD '62. One could argue, in fact, that as the city has grown around and beyond the MPD '62, the poor have – as Map 9 suggests – remained in the core imagined by the first plan. They have done so, importantly, not just during the 1962-81 period when the MPD '62 applied but also well beyond it, through the 1980s to 2000s. *Bastis,* in other words, chose to settle on public land in the MPD '62 area rather than in the vast areas in the West and Northwest of the city. These areas, as Maps 4 and 5 showed us, were where large middle and upper middle class colonies were being built through the 1990s. These were by no means peripheral or underdeveloped areas without markets, employment or housing.

The implications of this spatial clustering for interventions in housing is immense. For Delhi, debates on ideas of "public purpose" determining the use of publicly owned land, the metrics, mechanisms and evaluation of its value and the determinations of "public

interest" that govern its use have a specific and disproportionate importance for the poor. This is both an opportunity and a potential pitfall. The former lies in the far reaching effects state action can still have on housing for the poor, even within a time of what Goldman calls "speculative urbanism." The mechanisms to do so exist. If, for example, as current housing policies and particularly the new central housing initiative for the poor under JNNURM suggest, in-situ upgradation is implemented for existing JJ Clusters, the locations poor households find themselves in would be tremendously advantageous. Elsewhere, I have described this clustering as an upgrading dividend (Bhan and Shivanand 2012). However, it is precisely these locations that may make this political imperative difficult. The darker counter-argument suggests that the current trend of increased evictions and peripheral resettlement occurs precisely because of the prime locations of many JJ Clusters within the city centre. Further, as Sivaramakrishnan has argued, the ability of planning authorities to exercise such an option is systematically being eroded as deregulation and reform weaken instruments and techniques of public control over land and land use in Indian cities (Sivaramakrishnan 2011).

Challenges to the Politics of Stealth

The territorial legitimacy of the Plan challenges certain contemporary theories of how the poor settle within cities of the South. Solomon Benjamin argues, for example, for an occupancy urbanism (Benjamin 2008). Taking "land rather than the Economy" as his starting point, he argues for a perspective that, "contests narratives that view cities as passive stage sets, acted upon by a macro-narrative" (2008: 720) – a critique made often of modernist planning embodied by the MPD '62. Occupancy urbanism, Benjamin argues, focuses on other materialities, the incremental nature by which land is actually settled.

Benjamin's argument is both correct and insightful. I seek to add to it only a sense of its limits as well as possible new engagements in response to these limits that take us further in thinking about, as Benjamin is interested and committed to doing, subaltern and micro-politics in the Southern cities. Large-scale evictions in Delhi significantly challenge the narrative and possibility of "occupancy," "the politics of stealth" or even "the quiet encroachment" suggested by Bayat (2001), whether these work through vote-bank politics, complex negotiations with local and municipal politics, or knowing how to "work" the system. "Macro-narratives" are indeed unable to control the city, as Benjamin suggests, but this does not mean that they do not determine many aspects of inhabitation in the city, by rich and poor alike, or that the political techniques of negotiation, stealth, subversion and resistance are not applicable to these macro-frames just as powerfully. In other words, different Plans fail to control the city at different times in different ways. Understanding these differences is necessary whether one seeks to support or resist planning, and certainly if one believes that planning is "irrelevant" for those who "live outside it." What the data suggests is that none of these housing categories, and particularly not those considered "unplanned," are or can be "outside" planning.

Benjamin shows how elite civil society organizations in Indian cities pit "planned development" against "slums" but planning and the Master Plans do not seem to be important sites of engagement or resistance for him. Planners, he argues, "are duty

bound and cajoled into declaring [particular] land settings as illegal" (2008: 724). What makes planners "duty-bound" other than the terms of the Plan and Planning process? How could challenges to and probematisations of these terms and the categories they work through act as a form of resistance? Can planners not practice occupancy urbanism, focusing on politics, materialities and open-ended complexities? Benjamin's concern with respect to planning is to show its inability to control the city. Yet the counter-narrative of this "failure," as I have argued, is as incomplete as the modernist planning's claims of success.

This is dangerous ground to cede. Benjamin argues that planning and policies have become the domain of elite engagement – it is business associations like NASSCOM or FICCI[66] and elite city associations like the Bangalore Action Task Force and Mumbai First that are calling for "comprehensive planning." Yet this is precisely a reason to reclaim planning as a site of urban politics. This chapter, in deconstructing the "failure" of planning to show how traces of the Plan continue to impact the city and the lives of the poor within it, has attempted to make a case that Planning is a site that subaltern and urban politics must engage with. It certainly must not cede it to, or dismiss it as, a terrain of state rule, as an irrelevant set of archaic and forgotten modernist ambitions or a site of elite capture set in opposition to "complex negotiations at the local level" that are seen as the primary domain of engagement for the urban poor.

Informality, Illegality and Poverty: Re-thinking Planning Theory

From its roots in economics and the theory of dual labor markets, informality has been traditionally represented as "a sphere of unregulated, even illegal, activity, outside the scope of the state" (Roy 2008). In urban theory, the narrative of "informality" has been a particular marker in theorizing cities of the global South, particularly "megacities" that are "big but not powerful" (Robinson 2006) and beset by "problems." In this depiction, the informal has been one of the key drivers of the "dysfunctional landscapes of Southern cities" (Rao 2006) that are seen as the result of the "the dominance of informal, unplanned urban growth" (Swamy, Bhaskara Rao et al. 2008).

Until recently, the bias in urban theory has been to see informality more as "a domain of survival by the poor and marginalized" (Roy 2008: 2). In this reading, it is often quickly reduced to the "slum." The slum then is read as a "demographic and territorial form" that is the "spatial manifestation of the informal proletariat that has emerged from over a decade of structural adjustments" (Davis 2006: 28). It is the "distorted substance" that changes the "urban into a dysfunctional stage for violence, conflict and the iniquitous distribution of resources" (Rao 2006: 231). It is that out of the reach of the state and of modernization, that which stubbornly refuses to "bow out" of modernity's way (Nandy 1998).

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[66] The National Association for Software and Service Companies (NASSCOM) is "premier organisation that represents and sets the tone for public policy for the Indian software industry." See www.nasscom.org. FICCI stands for Federation of Indian Chambers of Commerce and Industry. See www.ficci.com.

Roy (2005) makes a different argument. She argues that urban informality is not, in fact, a "bounded" space or sector at all, but a type of governance. She understands it as the state's ability to suspend order, to "decide what is informal and what is not, to determine which forms of informality will thrive and which will disappear" (Roy 2005: 182). This is a "new spatial vocabulary of control, governance and territorial flexibility" (Roy 2003: 157), a mode of the production of space. In her more recent work, she refines her analysis: "While I wish to maintain the idea of informality as a mode of discipline, power, and regulation, I now seek to reject the designation of extra-legality. That terminology implies that informality is a system that runs parallel to the formal and the legal. Yet, the formal and the legal are perhaps better understood as fictions, as moments of fixture in otherwise volatile, ambiguous, and uncertain systems of planning" (Roy 2009: 81). How does our data respond to this set of debates?

First, the data shows that "unplanned" growth is not the domain of the poor or the slum. If the "dysfunctional landscapes of Southern cities" are indeed caused by the "dominance of informal, unplanned growth," as Rao argues, then this dysfunction must take into account not just the 'slum' but the production of illegal housing by the middle and upper middle classes as well. In fact, the data reminds us that illegal construction of housing is, in fact, the dominant mode of production of housing and shelter in the city. The reduction of urban dysfunction to the 'slum' in policy, everyday discourse as well as within urban and planning theory, I argue, has played a key role political and intellectual role that is, in David Harvey's use of the term, "counter-revolutionary" – it not only asks the wrong question, it prevents the real question from being asked.[67]

I suggest a different field of inquiry – if illegality is indeed the dominant mode of production of urban housing as the data suggests, then how do we understand and account for the processes within as well as implications and management of different kinds of illegality when exercised by different urban actors? This reframing insists that analyses of urban politics be relational, looking at the ways in which particular kinds of urban practices and actors are framed as "illegal" relative to others and what work such a framing is meant to do. In other words, it argues that how the dirt is kept at bay – what kinds of "ideas about separating, purifying, demarcating and punishing transgressions," as Douglas would put it, exist – matters in the differential impact these have on urban politics and particularly a politics of resistance. One example of this is in my own use of the word "illegal" rather than informal. It is not unintentional that only a *basti* is called an "informal settlement" colloquially even in a city where planned housing is in a minority. Though they share overlapping concerns and definitional terrains, the framing of unplanned growth as "informal" as opposed to "illegal" has implications – it is a particular way of keeping the dirt at bay with particular consequences for urban politics. As I shall argue in detail in Chapter Four, this has particular implications for claims to legitimacy by different urban residents and within newly emergent urban actors like the judiciary.

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[67] See Harvey 1973

The MPD '01 and MPD '21 deliberately chose not to include already built-up areas within notified development areas of the Plan. Since we know that the only way to be legal and planned within our settlement typologies is to be within the development area, built up housing in this area is thus rendered illegal by through these Plans choosing not to include them. The second set of connected examples is the waves of "regularization" of Unauthorized Colonies to make them legal Regularised Colonies. Here, the discretion is exercised among unplanned settlements as opposed to between planned and unplanned colonies. Which 733 colonies of the 1639 will be regularized and which will remain Unauthorized? On what basis? In the absence of objective metrics by which the regularization process functions, it is indeed the discretion of the DDA to decide who will become legal and who will remain illegal, at what time and for how long.

The construction of the categories of housing complement this discretion. Since the typologies are not based on objective metrics of what makes one colony a JJ Cluster, a Slum Designated Area or an Unauthorized Colony; or even what differentiates a Planned Colony from a Resettlement Colony, the categorizations are clearly political rather than technical choices that emerge from the developmental authorities. They cannot be contested objectively, by any set of metrics, even they violate the principles of categorization themselves.

What does this tell us about the relationship of illegality and the Master Plan? It is Plans, and not the failure of their implementation, that produce and regulate illegality. They determine, through their discretionary ability to notify or not notify parts of the city within the development area, as well as through waves of "Regularization" that include certain colonies but not others, or even in patterns of eviction that evict certain *bastis* but not others, which settlements will be legal and which illegal, which will thrive and which will not be allowed to exist. The production and regulation of illegality is part of, and not outside, planning and planned development. It is a technique of rule, what Roy calls a "a spatial mode of governance."

Yet there are limits to this mode of governance. These limits are embedded both within and exercised through the Plan. The first is the unintended consequences of planning as outlined above – once Plans are notified, even if they "fail" their traces still determine spatial patterns of housing. This implies that there are constraints to the state's own ability to reach directed outcomes through planning. The second limit is that discretionary governance – what Roy calls a "calculated informality" – exercised by the state still uses and is thus bound by the categories of planning. I showed in multiple instances in this Chapter that the DDA often violated its own principles of categorization. As Chapter Two will argue in detail, this violation has consequences. Its ability to be discretionary and 'calculated' has limits. This is particularly true when different institutions within the "state" choose to exercise competing discretions within the city. In the chapters to come, the advent of the Judiciary and their understanding of the Plan as statutory law, for example, will greatly compromise the ability of the executive to exercise discretion as a part of rule. Contrary to what Roy argues, within the courtroom, the "formal and the legal," are perhaps not better understood as "fictions" – they take concrete, juridical form that is based on the categories and

stipulations of Planning. To be both understood as well as resisted, this juridical form will have to, at least partly, be deconstructed from within Planning itself.

Built Environments and Built Categories

In her study of crime and socio-spatial segregation in Sao Paulo, Teresa Caldeira argues for the "generative symbolism" of what she calls the "talk of crime" (Caldeira 2000). Narratives that tell and retell stories of crime create categories that "attempt to establish order in a universe that seems to have lost coherence" (2000: 20). This "symbolic reordering" relies on "simple, clear-cut categories." The categories are "rigid," argues Caldeira, "they are meant not to describe the world accurately, but to organize and classify it symbolically" (2000: 31).

The categories of the housing typology are planning categories. By this I mean that they take as their primary principle of classification the relationship of housing to the Plan. Yet, as we have seen, a temporal limit in the very definition of being considered "planned", housing shortfalls, delays in the notification of Plans, and deliberate exclusion of large urban areas from being notified as development areas where planned housing can either be built or exist, make being "planned" an impossibility in Delhi from almost the inception of planning in the city. How do we understand being "unplanned" in the context of the impossibility of existing as a planned colony? It is here that the categories of housing again play a vital role – they are the site both of the production and reproduction of the impossibility of planning, and, ironically, simultaneously the site that ensures that Plans and planning categories remain deeply relevant in determining inhabitation within the city.

The categories of housing keep "dirt" or the "unplanned" at bay by ensuring that no other form of settlement can acquire the same status. The clearest instance of this is the false distinction between two housing colonies that are formal, planned, legal and legitimate: Planned Colonies and Resettlement Colonies. Why would housing categories not simply call a newly established colony built with explicit inclusion within the Plan, in a zone marked for residential use within the development area at the time it was built as anything other than a Planned Colony? For that matter, why is a colony that is made legal and legitimate still called a Regularised-Unauthorized Colony, rather than simply a Colony, Approved Colony, or a Planned Colony? A series of legal colonies, therefore, are still not termed as "planned." Their categorization eternally records their "unplanned" origins even as these origins, as argued above, are caused within the impossibility of being planned rather than a deliberate violation of planning and even if these colonies are now both legal and legitimate.

A second example is the relevance of how the categories of the typology are named. *Bastis* are termed JJ Clusters. Yet what is ironic is that if one ever visited a *basti* in Delhi, and asked where to find Ekta JJ Cluster, or Sanjay Camp JJ Cluster, an immediate, perhaps bewildered correction would be issued. There is no such place, one is likely to be told, but there is the Ekta JJ Colony, or the Sanjay Camp JJ Colony. The only housing category not termed a "colony" is, not coincidentally, the JJ Cluster. It is not unknowingly that residents of *bastis* refuse the idea of the "cluster" and replace it with the English word "colony" even when they are not English speaking. A "colony"

represents and symbolizes legitimate (even if not legal, not planned) housing. It holds the promise of recognition and security. Refusing to recognize this aspiration is a means by which the settlement, and all those who live within it, are delegitimized. In Chapter Two, I will argue the Courts repeat precisely this process of delegitimization relying on the categories of the Plan.

The definitional manipulations and naming practices of the categories of housing are techniques of rule, exercised in the name of and as part of planning practice. They are critical in determining the distance between the legitimate and the legal. In other words, they are part of the calculus – beyond the state and its attempts at governance – that determine whether a legal or illegal colony is legitimate or not, i.e. if it can enjoy a defacto security of tenure. Thinking of the Plan as "failed" invisibilizes this work done by planning categories. These categories, Caldeira reminds us, are part of "classificatory thinking concerned [with] the naturalization and legitimization of inequalities" (2000: 31). The Resettlement Colony and the Regularised Colony may be legal and legitimate, but they are denied equality in status with Planned Colonies. The JJ Cluster is not a "colony" like other kinds of housing. These inequalities in status are legitimized through norms of planning. The typology of settlements is, in other words, a productive hierarchy. It is a hierarchy, I will argue later in Chapter Three and Four, that has become the basis of a differentiated urban citizenship and social order.

Chapter Two

Planned Development and/as Crisis:
Evictions and the Politics of Governance in Contemporary Delhi

*What is to be done in this never-ending drama of illegal encroachment
in the capital city of our republic?[68]*

*It quenches the thirst of the thirsty, such is Nangla,
it shelters those who come to Delhi, such is Nangla.[69]*

"There is an encroachment," said the Delhi High Court, "on the Ring Road, on the left side of the T- Junction on the Ring Road-Bhairon Road crossing." To the people who lived there, the 'encroachment' was a *basti*[70] called Nangla Maachi, or as in the couplet cited above, just 'Nangla.' Over nearly twenty years, Nangla had been transformed from a swamp area near the River Yamuna in the south-eastern part of Delhi into a settlement housing over 2800 families (nearly 15,000 people). Like other poor settlements in Delhi, its residents were mostly service providers to the city: domestic workers, recyclers and ragpickers, small business and trade owners, construction workers, tailors, rickshaw pullers, and craftsmen and women.

In the Delhi High Court, Nangla was both hypervisible and invisible. In a case called *Hemraj vs the Commissioner of Police and Ors*[71] [henceforth, *Hemraj*[72]], the Court noted its presence and ordered its demolition in no less than eleven different orders between 2001 and 2006. Yet in not a single one of these eleven orders was Nangla ever mentioned by name. It remained simply, each time it was mentioned, a full sentence, geographically accurate and devoid of life: "an encroachment on the left side of Bhairon Marg on the way to Noida" or "the remaining encroachment on the left side of the T- Junction going from Pragati Maidan to Noida."

"Unauthorized occupants," the Judges said, "have encroached upon the valuable land and opened commercial shops." It is "shocking," they argued further, that on "the main arterial road of Delhi, i.e. the Ring Road, unauthorized encroachment is allowed." These unauthorized occupants had "buffaloes and other animals" that not only created a

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[68] *Wazirpur Bartan Nirmata Sangh vs Union of India.* Petition was filed as CWP 2112 of 2002. Along with other petitions, judgment was recorded at 108 (2002) DLT 517. From Orders of 03.03.2003. See fn 5 for citation structure of judgments.

[69] From Nangla's Delhi: http://nangla.freeflux.net/. Accessed 22nd September, 2011.

[70] The Hindi/Urdu word *basti* (related to *basna*, to settle) means settlement. Colloquially, it is the word most commonly used by residents of urban poor settlements to describe their homes and hence it is the word used throughout this dissertation. Colloquially, *bastis* are understood to represent settlements typically marked by some measure of physical, economic and social vulnerability. It is these settlements that are often called "slums." Within planning paradigms in Delhi, however, a "slum" refers specifically to a settlement designated as such under the 1956 Slum Areas Act. I use the word 'slum' only to either refer to this specific planning category or to report its use in English when necessary. In relation to planning, *bastis* cover three types of settlements: Slum Designated Areas, Resettlement Colonies and JJ Clusters. See Chapter One for a detailed discussion of these categories.

[71] Hemraj v Commissioner of Police and Ors. CWP 3419 of 1999.

[72] In referring to legal documents in this chapter, I use short form citations of the name of the petitioner in italics for ease of reading. I refer, for example, to *Wazirpur Bartan Nirmata Sangh vs Union of India (2002)* as *Wazirpur.* Where a reported judgment exists, I cite its record. For example, in this case, the citation 108 (2002) DLT 517 is the record of the reported judgment. If a reported judgment does not exist or when I am directly referring to the original petition filed in the case, I use the citation for a petition. Such petitions are then cited often as "CWP" or Civil Writ Petition and are marked to indicate the year in which they were filed. For example, *Hemraj* (fn 71) is the 3419th civil writ petition filed in the year 1999. Hence, it is cited as CWP 3419 of 1999. When I cite interim orders in a petition that precede a final, recorded judgment, I give the date of the order. For example, "Orders of 29.02.2010."

"problem of hygiene" but also created a "hindrance for the smooth flow of commuters" that the judges specifically pointed out "are in lakhs," the Indian metric for hundreds of thousands. These unauthorized occupants used the land "not for shelter" but "for commercial activities." The Court was irate that "tax payers money" was being spent on "widening on the road" on one hand and on the other, "illegal encroachment" was "allowed for commercial benefits." The reason for the encroachment was clear. As a result, the Court argued, "of passing the buck from one government agency to another, [no one] came forward to own responsibility to get the encroachment cleared." This gave "ample time" to the "encroachers" who "further proliferated on the land" as if it "was no man's land."[73]

Yet in the original petition filed by Mr Hemraj on behalf of the residents of Deragaon, an urban village in entirely another part of the city, Nangla– in fact, any *basti* or any type of encroachment at all – isn't even mentioned. The petition is not about "slums" or "urban poverty," let alone about Nangla in particular. It is, in fact, about traffic. Not even 'traffic' per se, but the movement of large vehicles/trucks across a particular stretch of road outside the petitioner's house during a particular set of hours in the day. Its main prayer is simple: "to impose restrictions on the movement of heavy and medium goods traffic on the entire main road from Chattarpur Mandir leading towards Bhatti Mines during peak hours in the morning as well as in the evening."

Yet in August, 2006, under the orders of the Delhi High Court, Nangla was demolished. Less than half of the residents were eligible for any form of resettlement. Some were excluded because they did not meet the "cut-off date" – only those that could prove that they had been residents of the *basti* before 1998 were eligible for resettlement.[74] Complex tenurial agreements between "owners" and "renters" meant that many renters were instantly excluded from even the possibility of being eligible. Many of those eligible were unable to afford even the minimal down payment required to get an alternate plot. Those that were resettled were sent to Savda Ghewra, no less than fifty kilometers away on the Western periphery of the city, in plots of either 12.5 sq m or 18 sq m, for families with an average size of five. Amenities were scarce if not absent, especially compared to Nangla, where the community that had built up its own environmental services over two decades.

Evictions are not new to either cities or to Delhi. Yet Nangla is one of a series of evictions that have scarred contemporary Delhi that are different not just in degree but in kind from previous evictions. These evictions were not ordered by planning agencies, the municipality, development authorities or either of the State and Central level governments that govern the national capital. They were ordered by verdicts in the Delhi High Court and the Supreme Court of India, each in a unique legal innovation ironically intended to democratize access to justice in a country marked by entrenched inequalities: the Public Interest Litigation (PIL).

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[73] All citations in the above paragraph are from Orders of 14.12.2005.

[74] For many *basti* households, producing paper documentation is extremely difficult. Documents are hard won in lives that are predominantly informal and if any family has moved locations within the city, documents are rarely transferred from older addresses to newer ones, thus making proving continuous stay extremely difficult. Gender concerns, lack of access to local bureaucracies, and accidents like fire or even cases of theft are other reasons why producing acceptable documentation is difficult. I will take this issue on in more detail in Chapter Three, as documentation becomes a barrier to accessing the Courts as well.

Evictions are only one marker of an increasing juridical presence in contemporary Delhi. PIL decisions emerging from the courts have been responsible for many of the major changes to the city's urban systems since the mid-1990s: the closure and relocation of "hazardous" industries to outside the city limits;[75] the conversion of all public transport and private commercial transport to the use of compressed natural gas;[76] decisions on municipal solid waste disposal;[77] the "sealing" of unauthorized commercial units in residential neighborhoods in violation of the city master plan;[78] and, most recently, the cancellation of a number of residential developments in peri-urban Delhi by nullifying the process of land acquisition of previously agricultural land from farmers.[79] Contemporary Delhi is a city shaped by judicial decisions taken in the public interest in what has been described as an era of 'judicial activism,' 'judicial adventurism' as well as 'judicial governance.'

In a city marked by deep poverty and inequality, how did the highest courts in the land determine that preserving a settlement that provided shelter for 15,000 urban residents in the city is not in the public interest? Authors searching for explanations have looked closely at the Court's portrayal of the poor as "encroachers"(Ramanathan 2004; Dupont 2008), the use of "nuisance" laws (Ghertner 2008), changing environmental mores that portray the poor as "dirty" in what one scholar has termed "bourgeoisie environmentalism" (Baviskar 2003), a newly expanded and vocal middle-class that is seen as "anti-poor," a shifting political climate in Indian cities that seek global transformations into "World-Class Cities" where there is little, if any, place for the poor (Chatterjee 2004; Menon and Nigam 2007), or simply the "anti-poor" nature of the judiciary[80] (Bhushan 2004; Rajagopal 2007). This Chapter builds upon these explanations but suggests both a different focus and purpose of inquiry. It argues that to understand how a petition about traffic in one part of the city can result in the evictions of thousands in another, especially through a petition in which eviction was never even demanded, one must look not just at the poor but at the city itself.

Within debates on 'judicial governance' in the 1990s and 2000s, I argue in this chapter that evictions are a privileged site through which to assess broader judicial efforts to make the city into what Nikolas Rose calls a "governable space." Using a Foucauldian analytics of government, I show that the Courts are a site of the production of new governmental rationalities based on altered understandings of a familiar set of concepts –the "city", "public," "inequality", "slum," "governance" and "development" – through the introduction and privileging of others: "encroachment," "planned development," "crisis" and "order." These rationalities emerge within the construction of a particular understanding of the city as a site of crisis both marked and caused by the failure of what the Courts repeatedly call "planned development." In chapter one, I problematized

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[75] MC Mehta v Union of India, CWP 4677 of 1985
[76] MC Mehta v Union of India, CWP 13029 of 1985
[77] Almitra Patel v. Union of India, CWP 888 of 1996
[78] Kalyan Sanstha Social Welfare Organisation v Union of India & Ors CWP 4582 of 2003
[79] Initial orders of this cancellation have just begun to be reported in the media at the time of writing. See http://articles.timesofindia.indiatimes.com/2011-07-07/india/29746406_1_builders-land-acquisition-shahberi-village. Accessed 19th April, 2012.
[80] Personal Interviews with Dunu Roy and Kalyani Menon-Sen. See also Nigam 2001, Bhan and Menon-Sen 2006.

this failure. Now, I show how the Courts' construction of the idea of the "failure" of planned development comes to not only define the threat to public interest but also becomes the both the basis as well as the object of the Courts interventions into contemporary Delhi.

A set of questions then define our inquiry: Within the case law on evictions, how is 'failure' understood – what are its manifestations, symptoms, causes and consequences? How does it become a definitional concern of the public interest? How are evictions legitimized within it? How does it relate to judicial interventions in the city, on the one hand, and debates on judicial governance or activism, on the other?

To address these questions, I draw upon a body of case law. Taking as my main archive twenty four PILs that have resulted in evictions in Delhi between 1990-2007 in either the Delhi High Court or the Supreme Court of India, I focus not just on the verdicts in these judgments but the *dicta*, i.e. the detailed texts of the Judges' orders in which they locate their decisions within and as the public interest. I looks not just as the judgments and orders of eviction issued the Judges but also at the original petitions that initiated the PIL, affidavits filed by petitioners, intervenors and other impacted parties, reports by court-appointed expert committees as well as attempts to appeal or stay the orders of the Court by communities threatened with eviction. Finally, I draw upon a series of interviews conducted in 2009-10 with key actors in many of these cases – lawyers, petitioners, experts called to testify and, in three cases, the Judges themselves.

The Chapter is in structured in four parts. The first lays out the theoretical frame, i.e. an analytics of government. The second then presents a brief history of the emergence of PIL within Indian jurisprudence, focusing on urban case law within Delhi. The third part, which is the main section of the Chapter, analyses the case law on evictions to show how the Courts legitimize eviction within new urban governmental rationalities based on particular notions of planning and planned development. The final, concluding section then discusses the implications of these emerging governmental rationalities in thinking about contemporary urbanism and urban governance in Delhi at a time of political and economic transformation.

An Analytics of Government

The work of Michel Foucault on that art of government is much studied. Now famously defined as the "conduct of conduct," government in Foucault's work refers to the multiplicity of attempts taken on by a range of authorities and agencies in order to shape conduct. Foucault, in looking at Western European societies in the 16th-18th centuries marked what he called the "governmentalisation of the state": the "tendency, the line of force, that for a long time, and throughout the West, has constantly led towards the pre-eminence over all other types of power – sovereignty, discipline and so on – of the type of power that we can call 'government'" (Foucault 1991 [1979]: 108). The shift, in other words, from centralized power to "those thousands of spatially scattered points where the constitutional, fiscal, organizational, and judicial powers of the state connect with endeavours to manage economic life, the health and habits of the population, the civility of the masses and so forth" (Rose 1999: 18).

Dean argues that governmentality, in Foucault's work, marks the emergence of a "distinctly new form of thinking about and exercising power" though one that is still in a certain relationship with older forms such as sovereignty and disciplines (Dean 2010). In this historically specific manifestation, Foucault described the rise of the art of government as a "distinct activity" based on certain forms of knowledge concerned with a new object, the 'population', in a particular register, the 'economy.' The welfare of the population as well as the forms of knowledge and technical means appropriate to optimize it became, he argued, the concern of government.

My interest here is not to translate the historically specific observations about power and rule from early modern Europe to the post-colonial Global South nor to take from Foucault's work a general theory or history of power and rule to argue for a similar shift in the balance of sovereignty-discipline-governmentality to understand evictions in an Indian city. I am interested, following Nikolas Rose, in a "looser relation" to Foucault's conceptualizations; to being committed instead to a "certain ethos of enquiry" embodied in his work that Rose (1999) and Dean (2010) call an "analytics of government."

An analytics of government, argues Dean, views "practices of government in their complex and variable relations to different ways in which 'truth' is produced in social, cultural and political practices" (2010: 27). It asks, quite simply, "how we govern and are governed within different regimes, and the conditions under which such regimes emerge, continue to operate and are transformed" (2010: 33). It is important for Dean that the question is a "how" question. The focus on a "how" question rejects *a priori* location or structure of rule, instead seeing power as the "mobile and open resultant of the loose and changing assemblage of governmental techniques, practices and rationalities" (2010: 40).

An analytics of government is based then on what Dean calls the "general meaning" of governmentality in contrast to its historically specific manifestation. In a useful formulation, Jonathan Inda argues that what he calls "the governmentality literature" undertakes such an analytics on three broad themes: reason, technics and subjects.[81] *Reason* explores the rationalities of government. Studies of the rationalities of government are concerned, argue Rose and Miller, with "the changing discursive fields within which the exercise of power is conceptualized [and] the moral justifications of particular ways of exercising power by diverse authorities" (Rose and Miller 1992: 178). Governmental rationalities, argues Rose, are thus the means by which "governance is legitimised in relation to truth." These rationalities, argues Rose, have: (a) a distinctive *moral form*, i.e. "ideals or principles that should guide the exercise of authority, such as justice, equality, or citizenship, among others; (b) an *epistemological character* in that they are "articulated in relation to some understanding of the spaces, persons, problems, and objects to be governed"; and (c) a distinctive *idiom* or language (Rose 1999: 25-27).

Tecnics refer to the mechanisms, techniques and technologies by which authority is constituted and rule established – how government takes a technical and pragmatic

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[81] Dean uses a similar triad: *techne*, *episteme*, and *ethos*.

form. It is the "complex of techniques, instruments, measures and programs" that endeavour to translate "thought into practice" and "actualize political reason" (Inda 2005: 9). Finally, *subjects* refer to the forms of individual and collective identity – the types of selves, persons, actors, agents or identities – that arise from and inform government. Dean terms this axis of analysis as "ethos," or the "practices of the self." Here, Dean argues that the analytic questions include: "what forms of person, self and identity are presupposed by different practices of government and what sorts of transformation do these practices seek?" (Dean 2010: 32).

This Chapter undertakes an analytics of government looking the case law on evictions. It asks a distinct set of questions: what rationalities, reasons, "changing discursive fields" and "moral justifications" underlay the framing of evictions as acts of public interest? What "distinctive moral form" or "principles" shaped the Court's interpretation of public interest? What techniques or instruments emerged to put these rationalities into practice? In particular, what technologies and forms made the problems and objects of government visible within the Court? How were the objects of government – the "poor," the "slum," the "city" – understood? What was their "epistemological character" within the courtroom? And, finally, what are the regimes of government understood as what Dean calls "assemblages or regimes of practice" that become intelligible through this analytics?

Before we proceed, however, it is important to understand the context of our anlaysis itself – a unique judicial innovation practiced within the regional high courts and the Supreme Court of India called the Public Interest Litigation (PIL).

Public Interest Litigation

> The rule of law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by vested interests for protecting and upholding the status quo under the guise of enforcement of civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also, though today it exists only on paper and not in reality.
>
> - Supreme Court Judgment,
>   *PUDR v Union of India (1982)* [82]

In the late 1970s, the judiciary in India, led by the Supreme Court, fashioned itself as a privileged site for the defense of rights and social justice, particularly for the poor. It would be not be an exaggeration, Rajagopal argues, to say that "most social movements in India since the 1970s have actively used the courts as part of their struggle, be it the women's movement, the labor movement, the human rights movement, or the environmental movement" (Rajagopal, 2007: 158). They were, in fact, invited in. Through a unique judicial innovation called the Public Interest Litigation (PIL), the Supreme Court sought to democratize access to justice, to become the "last recourse for the oppressed and the bewildered."[83]

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[82] People's Union for Democratic Rights (PUDR) v Union of India (1982) AIR SC 1473.
[83] Justice Beg in State of Rajasthan & Ors v Union of India (1977) AIR 1361.

Through the late 1970s through to the mid-1980s, the Court did so, even critics concede, admirably. Judgments expanded the meaning of the Right to Life under Article 21 to include livelihood and the environment; defended the freedom of the press; protected prisoners rights; addressed sexual harassment at the workplace; argued that basic education was a fundamental right; and guarded the rights of employees (See Muralidhar and Desai 2000; Sathe 2002; Rajagopal 2007). Requirements for the filing process were eased to the point that that it was commonly said that, "the court treated even a simple letter as a litigation,"[84] taking upon itself the costs of litigation as well as the work of gathering facts and evidence. From the mid 1990s, an early emphasis on civil and political rights broadened to socio-economic rights, distributive justice, and, critically for our narrative, questions of governance, environment, and development. Yet within this shift, many claim, the nature of the Court's judgments also changed – an argument that I will return to in the next section.

The Courts active and dynamic engagement has been described as judicial activism (or 'judicial adventurism' to its critics) and even as judicial governance, recognizing both the "administrative" (Sathe, 2000: 238) or legislative character of its orders and that the PIL process often, some argue, "obliterates the line between law and policy" (Muralidhar and Desai 2000). PIL moves, argues Sathe, the "character of the judicial process from adversarial to polycentric, and adjudicative to legislative" (2000: 235). It is this polycentric nature of the PIL, where the Court must evaluate competing claims to rights, entitlements and resources in the name of public interest, that critics argue is precisely the work of democratically elected or statutorily appointed institutions of the executive.

As the volume of PILs continues to increase, debates on judicial activism and governance are not just academic or restricted to legal or policy circles – the terms themselves have entered everyday discourse and dominate, for example, media headlines. Rajamani argues that the Court has emerged as the "natural choice" not just for rights but particularly to ensure the fulfillment of public duties by the executive arm of the state (Rajamani 2007). Far from being an innovative but marginal part of judicial function, therefore, senior Supreme Court advocates Muralidhar and Desai argue that PILs today "dominate the public perception" of the judiciary (Muralidhar and Desai 2000).

How did the PIL become a definitive space for the determination of rights and take on an administrative and legislative character? How have evictions, the urban poor and the contemporary city itself figured within these judgments? The PIL is both a substantive as well as technical departure from traditional litigation. But before we turn to its structure and an assessment of three decades of such litigation, however, it is important to understand why PIL emerged when it did in the late 1970s. The site, reason and context of its origin – its *raison d'etre* – was, in fact, democracy's darkest hour: the Emergency 1975-77.

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[84] Letters to the Supreme Court were indeed treated as PILs in *Sunil Batra v Delhi Adminstration* (1980) 3 SCC 480, *Dr Upendra Baxi v State of UP* (1983) 2 SCC 308, *Veena Sethi v State of Bihar* (1982) 2 SCC 583, *PUDR v Union of India* (1982) SCC 253, *Bandhua Mukti Morcha* v. *Union of India*, (1984) 3 SCC 161 and *Nav Kiran Singh* v. *State of Punjab*, (1995) 4 SCC 591; among many others.

Public Interest Litigation and the Emergency 1975-77

The Emergency refers to a two-year period from 1975-77 when a state of national emergency was declared by then Prime Minister Indira Gandhi. Basic constitutional freedoms were suspended including the rights to life and liberty as well as to freedom of expression and assembly. The result, as Tarlo argues, was "press censorship, arrests, torture, the demolition of slums and tales of forcible sterilization" (Tarlo 2001: 2). The official narrative of the Emergency, argues Tarlo, was to protect the nation's security and development. War with Pakistan had just ended, the oil shocks of the early 70s had left the economy in bitter shape, and armed peasant resistance in some parts of the country was growing. "We are not happy to declare Emergency," Tarlo quotes Gandhi as saying on Independence Day, August 15th, 1975, "but stringent measures [are] taken as bitter pills [that] have to be administered to a patient in the interest of his health. No one can prevent India marching ahead."[85]

Other narratives of the Emergency, and indeed the dominant accepted historiography of the event today, is that Gandhi was suppressing the rise of opposition political parties that challenged the Congress Party's electoral dominance. The Congress had ruled at the Centre continuously since Independence. Raj Narain, whom Gandhi defeated in elections in 1971, accused Gandhi of winning the election by fraud and challenged her victory in the Allahabad High Court. On 12th June, 1975, the High Court found Gandhi guilty and declared her election null and void. However, it acquitted her of the much more serious charges of violence, intimidation and fraud leveled by Narain. Trade unions, student movements and opposition parties took to the streets in nation-wide protests. On 25th June, 1975, Emergency was declared.

Under Gandhi's control, Parliament made substantive changes to the Constitution including suspending key Fundamental Rights like the freedom of expression, allowing her to arrest anyone who criticized her publicly and censor the press. The notorious Maintainence of Internal Security Act (MISA) essentially suspended the Right to Life by making indefinite preventive detention common practice. As Khanna argues, "the Judiciary bowed to the power of Indira Gandhi" (Khanna, 2012: 150). The High Court judgment declaring her election fraudulent was overturned by the Supreme Court. Judges who ruled against the Gandhi administration were denied permanent appointments or promotions. The lowest point, argues Khanna, was the *Habeas Corpus case*,[86] where the Supreme Court agreed that *habeas corpus*, the writ that prevents persons from being held without being charged or taken to trial, was suspended as the Right to Life itself was suspended. The case has been described as the Supreme Court's "contribution to the Emergency" (Muralidhar and Desai 2000). Khanna recounts that Justice HR Khanna, the lone dissenting voice in the case who was later summarily passed over for elevation to Chief Justice, asked the state's Attorney General: "Life is also mentioned Article 21 and would the Government argument [that the Article 21 is

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[85] Speech from Red Fort, 15 August, 1975, from Gandhi (1984) as cited in Tarlo (2001: 25).
[86] *ADM Jabalpur v. Shivkant Shukla (1976) AIR SC 1207.* Habeas Corpus – literally "you shall have the body" – is a writ that insists that a person must be brought in front of the law if held. As Khanna (2012) argues: "It is most often used in cases of illegal detention by the state, but also in the context of confinement by non-state actors."

suspended] extend to life also?" (Khanna, 2012: 150).

The Emergency ended in March, 1977, in democracy's "finest hour" when opposition parties won a landslide election against Indira Gandhi and Morarji Desai became the first non-Congress Prime Minister of India. Yet the Desai government fell in 1979, and in 1980, a mere three years later, Indira Gandhi, no longer democracy's villain, was re-elected as Prime Minister. In the interim, Khanna argues, "the Parliament and the Judiciary, now freed of their fetters, had reversed some of the more obviously anti-democratic amendments to the Constitution, the press had returned to its 'free' status, and significantly, the Judiciary had begun to make good for the shame of its failure in protecting Fundamental Rights during the Emergency" (2012: 163).

One of the ways of "making good" was for the Court to aggressively fashion itself not just as the defender of Fundamental Rights but the primary agent of their increasingly expansive interpretation and enforcement. The Court declared that the Constitution had a "basic structure" which included fundamental rights and that these could not be violated even by constitutional amendment. It took away, in other words, the Parliament's right to amend the constitution in any way – even by constitutionally enshrined procedure – that the judiciary deemed to violate the Basic Structure of the constitution. Baxi argues that "no court in the modern world had gone thus far" (Baxi 1997: 346). In passing the Basic Structure doctrine, the Court had made itself the ultimate arbiter of the Constitution as well as the protector of fundamental rights.

PILs draw upon Article 32 of the Indian Constitution that give the Courts the power to "issue directions or orders or writs, including writs in the nature of habeaus corpus, mandamus, prohibition, quo warranto and certiorari, whichever maybe appropriate, for the enforcement of any of the rights conferred."[87] It is worth quoting at some length how the Court saw its new role as a protector of fundamental rights using Article 32:

> Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but also lays down a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights.[88]

One of the new remedies was the PIL. How did the Court enable those disadvantaged, poor and marginalized to access the Court for justice? It is here that the technical innovations of legal procedure and the determination of evidence become important. Three main technical aspects are worth noting: (a) ease of rules of standing, i.e. *locus standi*; (b) new administrative and enforcement mechanisms through a *continuing mandamus*; and (c) new techniques of fact-finding and standards of evidence, including the formation of court committees and the recruitment of experts and *amicus curae*. I turn to each of these briefly.

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[87] For the full text of Article 32, see here http://indiankanoon.org/doc/981147/. Accessed April 19th, 2012. Also see
[88] M C Mehta v Union of India (1987) 1 SCC 395.

Procedures within PILs

Locus Standi, or Who can Speak for the Poor?

In a landmark Supreme Court case, *S.P. Gupta vs Union of India* (1982)[89] – popularly known as the *Judges Transfer Case* – Justice Bhagwati eased the rules of *locus standi*, i.e. the rules that governed who could appear before a court, specifically for the regional High courts and the Supreme Court of India. He did so to enable those in a "socially and economically disadvantaged position" who were "unable to approach the court for relief" to access justice through the highest courts of the land. Yet the Court recognized that the poor themselves often could not approach the Courts personally for geographic, financial, linguistic and many other reasons, especially if they were in situations, for example in prison where many of the first PILs originated, where their ability to do so was completely restricted.

The Court thus allowed, unlike in traditional legislation, parties not directly affected to speak for and represent the interests of others, presumably the poor. PILs thus opened up the door to "ordinary citizens" to approach the highest courts of the land in matters of public interest either to "espouse the cause of the poor and oppressed (representative standing), or to [seek] enforcement of performance of public duties (citizen standing)" (Rajamani 2007: p. 1, fn 4) but it also imagined civil society associations, NGOs, and individuals would speak for the rights of others. Justice Bhagwati argued:

> Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons... and such a person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for appropriate direction, order or writ...[90]

As Khanna argues, "the voice of a 'publicly minded', progressive and empathetic civil society [came] to be formed, both within and outside Court" (2012: 165). The question of who represents this "voice" and what it asks for will become critical for us to consider when we see how evictions were ordered under PILs.

The Violation of a 'Collective Right'

A decision in a landmark case called *Ratlam vs Shri Vardhichand and Ors (1980)*[91] [hereafter, *Ratlam*] further argued that this also meant that petitioners could speak of a "collective loss of the quality of life" caused, for example, in *Ratlam* by the municipality's

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[89] S.P. Gupta v Union of India (1982) AIR SC 149. In this case, the matter of judicial accountability and the system of appointment of Judges – a critical post-Emergency topic – was brought to the Court by lawyers, not judges themselves. The lawyers for the Union of India argued that the lawyers had no *locus standi,* i.e. they weren't affected parties since their own appointments were not the matter in question. The Court argued that the lawyers had a right to raise an issue of substantive public interest.

[90] As cited in Khanna 2012: 215
[91] Ratlam vs Shri Vardhichand and Ors. (1980) AIR 1622.

failure to prove water and sanitation services. Such "collective loss" became justiciable. In *Ratlam,* argues Sathe, it was recognized for the first time that "people could approach the court against violations of their collective rights and that the judicial process could be invoked for the enforcement of the positive obligations that public bodies have under the law" (2002: 214). The shift from adversarial to polycentric jurisprudence was complete. This shift raises an important set of questions that we will return to later in this chapter: how is a "collective loss" determined? In particular, how are competing rights claims within the determination of what counts towards the "quality of life" managed within the Court?

A PIL was not to be filed lightly. Once initiated, the Courts argued that it could not, unlike in traditional litigation, be withdrawn by a petitioner. A PIL petitioner, argue Muralidhar and Desai, is seen by the Court as one who is "drawing attention to a greviance that requires remedy" even when he is "having no personal stake in the matter" (Muralidhar and Desai 2000). How does one ensure that this petitioner, however, is committed to the entire and often lengthy process of what is still, in the end, a litigation that requires time, resources and effort? The Court, recognizing that the grievance in question cannot be ignored once brought to attention, thus argued that, "a person bringing a PIL to the Court cannot of their free will seek to withdraw the petition." The Court may "take over the conduct of the matter" if it feels that "in the interests of justice" the issue should be decided "irrespective of the wishes of the petitioner" (Muralidhar and Desai, 2000: 166). This peculiar feature of the PIL again gives the Court itself an independent and agential position that, as case law on eviction will show, it uses in a wide range of urban case law.

Continuing Mandamus

Ratlam was a turning point within PIL that saw Courts take "affirmative action" to "compel a statutory body to carry out its duty." In *Ratlam*, that duty was not just to construct sanitation facilities, but to do so "despite the great cost involved" and to do so in a "time-bound manner." The Court's order was a writ of mandamus. Mandamus – literally to "command" or "mandate" – refers in common law systems to the Court's directives or orders to a public official, body or a lower Court to perform a specified duty in the public interest. As we shall see, however, within PILs the Court often not just ordered public bodies to do their "statutory duty" but, in fact, determined what this duty itself entailed.

In *Vineet Narain vs Union of India (1996)* [hereafter, *Vineet Narain*],[92] a PIL was filed relating to the investigation of a corruption scandal by the Central Bureau of Investigation. The Court ruled that its orders were to be followed expeditiously not just in the instance but for an unspecified period of time with regular reporting to the Court. This was termed a further innovation – a *continuing mandamus*. In doing so, *Vineet Narain* set a precedent of setting up a system of long-term monitoring of the implementation of Court orders. This keeps PILs active and alive within the judicial system, at times, for decades – they are on-going sites of administration, reporting, and

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[92] Vineet Narrain v Union of India (1996) AIR SC 3386

action, not just cases that end at the point of a final judgment or court directive. In *Vineet Narain*, it was clear, argues Muralidhar, that the "Court controlled the entire investigation" in a manner that was widely reported in the media and publicly lauded, being seen as the only guarantee of a fair process (Muralidhar 1998: 8). This appreciation is important – where does this legitimacy of the PIL process and the judiciary come from?

The Court located the emergence of *continuing mandamus* in the failure of executive agencies to be relied upon to follow just a writ of mandamus. Since, the Court argued, "the continuing inertia of the [public] agencies to even commence a proper investigation could not be tolerated any longer" and since "merely issuance of mandamus directing the agencies to perform their task would be futile," the Court "decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of the investigation." Continuing mandamus was a "new tool," the Courts argued, forged because of the "peculiar needs" of the matter at hand. Yet, in cases hence, it has become a defining feature of PIL jurisprudence, challenging, many have argued, the line between protecting rights and controlling the function of the institutions of the executive.

Evidence as Expert Knowledge: Committees and Commissioners

If the judiciary was willing to treat a letter as litigation, how were judicial proceedings to proceed? What, in other words, was to replace the work that would traditionally be done by a petitioner of a case: framing legal arguments, citing statutes, and presenting evidence? Recognizing that PIL would need a new technology of fact-finding, gathering and judging evidence, the Supreme Court innovated the procedures of adjudication once again.

Within a PIL, a court takes on the responsibility of ascertaining the facts. It does so by inviting expert testimony as well as by appointing court commissioners and committees. These new institutional actors are the "eyes and ears of the court." The PIL courtroom is thus populated not just by lawyers but by "experts" and fact-finding committees that the Court appoints to gather data, present empirical and other evidence, and to testify on their subjects of expertise. This knowledge is a critical part and indeed often a basis of the Court's decision-making process in a PIL particularly in adjudicating competing rights claims.

Sharan argues that the Court thus directly intervenes in knowledge production around each of the issues of public interest raised before it. Citing environmental case law where the courts sought "scientific truth" about sources of pollution in Delhi, he argues that, the courts lose "their neutrality" because the "manner in which scientific truths are produced for a legal process" is itself "embedded in the very practices of the courts though which admissibility of evidence is determined or expertise certified" (Sharan 2010). Environmental cases are ideal examples of what Sathe calls "polycentric" issues, where competing claims have to be measured against subjective and multiple criteria.

Where do we locate cities and the urban poor within this history? How have they been visible to the Court? In the next section, I briefly trace a particular type of PIL case

law— cases related to urban poverty, 'slums' and evictions— identifying a clear shift within this case law from before and after mid-1990s. This shift, marked most visibly by the rise in evictions that is at the heart of our analysis, sees the claims of the poor and indeed the poor themselves as steadily excluded, criminalized and read out of a judicial space that was originally created in their name.

The Urban Poor within Public Interest Litigation: 1980s-2000s

'The Golden Triangle'

Initial post-Emergency PILs predictably centered around prisoners rights[93] and illegal and preventive detention. Yet from the late 1970s itself, a concern emerged that expanded the Court's purview to look at not just civil and political but also socio-economic rights. The basis of this expansion, Khanna argues, was an expansion in the Court's reading of Article 21, the Right to Life. In *Maneka Gandhi vs Union of India* (1978),[94] the Court held that the Right to Life "attained meaning" in conjunction with Articles 14 and 19, i.e. equality and freedom. The Right to Life, argues Khanna, moved from, "being simply a right to a bare life, to one of equality, of freedom, and the range of grand notions that the Supreme Court laid out in a flourish." This expansion was "the starting point for the glorious expansion of the 'Right to Life' as it found its place in a 'golden triangle' of fundamental rights" (Khanna 2012: 163).

Within the expanded right to life, Baxi argues, the Court was able to give life to the Directive Principles of State Policy, a chapter in the Indian constitutions about socio-economic ideals in education, health, livelihood etc. The principles are guidelines for the State but are unenforceable and non-binding unlike fundamental rights. Through the 1980s and early 1990s, in the first phase of PILs, Baxi argues, socio-economic rights enshrined in the Directive Principles were "made enforceable as integral aspects of declared fundamental rights" (Baxi, 1997: 350). Early PILs soon took on cases of livelihood, bonded labour,[95] child labour, housing, health, privacy, education, sexual harassment at the workplace,[96] domestic violence and the environment.

This was a time of great optimism about PILs. Baxi, a noted legal scholar and commentator, was moved to describe the period as no less than a "re-democratizing of the processes of governance and the practices of politics" (1997: 351). PILs were seen as filling a democratic vacuum as the "Supreme Court *of* India" became a "Supreme Court *for* Indians" in what Baxi called "chemotherapy for the carcinogenic body politic" (Baxi 2002: xvi). The Court became a site where rights were interpreted, expanded and enforced. The Emergency had, it seems, been well overcome.

Within the city, the effect of this moment was palpable. In 1985, the Supreme Court of India issued a landmark judgment that was to hold precedent over cases regarding evictions and resettlement in cities. In *Olga Tellis vs. Bombay Municipal Corporation*

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[93] See, for example, Sunil Batra v Delhi Administration (1980) AIR 1579
[94] Maneka Gandhi v Union of India (1978) 1 SCC 248.
[95] Bandhua Mukti Morcha v Union of India (1984) AIR 802
[96] Vishaka v. State of Rajasthan (1997) AIR SC 3011.

(1985),[97] the Supreme Court ruled that, "the right to livelihood is an important facet of the right to life." In effect, the court argued that "the eviction of the [pavement dwellers] will lead to deprivation of their livelihood and consequently to the deprivation of life." It argued that the urban poor do not "claim the right to dwell on pavements or in slums for the purpose of pursuing any activity which is illegal, immoral or contrary to public interest. Many of them pursue occupations which are humble but honorable." Importantly, the court also acknowledged that it was the state's non-implementation of the Master Plans of cities has caused the problem in the first place.[98]

It is important to read the judgment in this case clearly. Though the court did not stop demolitions, the text of the judgment betrays empathy for the plight of "pavement dwellers," a desire to minimize harm cause during the process of resettlement and an acknowledgment of the planning failures of the state. Further, it instructed the government to resettle those that (implicitly) it had failed to house. There were other cases at this time that echoed a similar empathy. In *K Chandru vs. State of Tamil Nadu* (1985),[99] the court argued that alternative accommodation must be provided *before* evictions can take place. The judges further hoped that "the government will continue to evince the same dynamic interest in the welfare of pavement dwellers and slum dwellers."

In 1989, the Supreme Court went a step further and stated that "reasonable residence is an indispensable necessity" for human development and the fulfillment of the Right to Life.[100] In another case, the court held that the "right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter."[101] It went even further a year later and ruled: "Article 19(1) (e) [of the Indian Constitution] accords right to residence and settlement in any part of India as a fundamental right. Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to a standard of living adequate for the health and well-being of himself and his family; it includes food, clothing, housing, medical care and necessary social services."[102]

The late 1990s: A Paradigm Shift?

The shift in discourse within the Courts was sudden and palpable. In Delhi, urban scholar Ravi Sundaram marks the beginning of the "new phase" of PILs with the *Industries Case[103]* in 1996.[104] The case ordered "hazardous" and "polluting" industrial units within the city to cease operating and relocate to the peripheries. The impact on livelihoods, argues Nigam, was considered secondary, if at all, to the "right to fresh air and live in pollution-free environments." In a judgment "widely reported in the Press,"

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[97] Olga Tellis vs Bombay Municipal Corporation and Anr. (1986) AIR 180
[98] A recent report by the National Planning Commission found that 90% of the shortfall in public housing units to be built under the Delhi Master Plan was in low-income housing targets. See Government of India 2006.
[99] K Chandru vs State of Tamil Nadu (1986) AIR 204
[100] Shantistar Builders v. Narayan Khimalal Totame (1990) AIR SC 630.
[101] Chameli Singh v. State of Uttar Pradesh (1996) 2 SCC 549.
[102] Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan And Others (1997) 11 SCC 123.
[103] MC Mehta v Union of India CWP 4677 of 1985
[104] Personal Interview, dated 09.11.2010.

Nigam argues, the Court "made clear that health is more important than livelihoods, and indeed the health of some are more important than the livelihoods of others." The drive against "polluting industries," he says, "and the drive against the poor [had] become synonymous" (Nigam 2001).

As evictions increased through the city, the judgments both followed and furthered their journey. In *Almitra Patel vs. the Union of India (2002),*[105] the court opined that Delhi should be the "showpiece of the country" yet "no effective initiative of any kind" has been taken for "cleaning up the city." Rather than see them as the last resort for shelter, "slums," the court said, were "large areas of public land, usurped for private use free of cost." The slum dweller was named an "encroacher," and the resettlement that had hitherto been mandatory became, suddenly, a matter of injustice: "rewarding an encroacher on public land with an alternative free site is like giving a reward to a pickpocket for stealing."[106]

The courts continued in the 2000s to refuse to hold the executive responsible for its failure to provide low-income housing and to erode the right to resettlement. When they did acknowledge state failure, they no longer interpreted it to mean that resettlement was therefore due. In *Okhla Factory Owners vs. Government of the National Capital Territory of Delhi*[107] [hereafter, *Okhla (2002)*] even as the court said that it was the "duty of the government to provide shelter for the underprivileged," it simultaneously argued that the failure to do so does not mean that the state "take up an arbitrary system of providing alternative sites and land to encroachers on public land."

The very citizenship of the urban poor began to be called into question. In *Maloy Krishna Dhar vs. Government of National Capital Territory of Delhi*,[108] the court differentiated between the justice deserved by slum dwellers who are "unscrupulous citizens" versus the "honest citizens who have to pay for land or a flat."[109] In *Hem Raj*,[110] the rights of "unscrupulous citizens" were summarily dismissed – "when you are occupying illegal land, you have no legal right, what to talk of fundamental right, to stay there a minute longer" – in the name of order: "if encroachments on public land are to be allowed, there will be anarchy."

In its latest order for demolitions in 2006, the Delhi High Court refused to stop demolitions even though most households in the settlement did not have any alternative resettlement sites. No more delays were permissible, the judges argued, because the land has "uses that cannot be denied," and that the more settlements are removed, the "more they come." Using language that echoed ideas of epidemics and illness, the judges argued that "their" numbers were "growing and growing," and that steps must be taken to "deal with the problem." When asked about where the poor where meant to reside

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[105] Almitra Patel v Union of India (2002) 2 SCC 679
[106] Orders dated 15.2.2000.
[107] Okhla Factory Owner's Association v. Government of National Capital Territory of Delhi. CWP 4441 of 1994. Judgment for the case came along with *Wazirpur* (supra, fn. 68) and is recorded at 108 (2002) DLT 517.
[108] Maloy Krishna Dhar v Government of National Capital Territory of Delhi CWP 6160 of 2003
[109] Orders of 21.09.2005.
[110] supra, fn 71.

in the city if not in informal settlements, the judge said: "if they cannot afford to live in Delhi, let them not come to Delhi."

In the section that follows, I look at closely at this case law to try and understand what Dean (2010) would call the "how" questions: how was this shift made possible within a judicial innovation meant to safeguard the rights of the poor? How was "public interest" redefined to make such exclusion possible? What new rationalities, technologies, and moral forms, to bring back our analytics of government, enabled this new regime of practices?

Assessing The Case Law on Evictions

How does one speak of the "Court"? In the text below, I speak of the Delhi High Court or the Supreme Court of India, well aware that within them judgments are given by individual judges with varied locations, opinions and styles. I continue to speak of these diverse individual judgments as emergent from the 'Court' for two reasons. The first is that within the Indian legal system, a single case often rotates among benches of Judges. In other words, in the course of its hearing, several judges will have presided over a case until it is reserved for judgment by a particular bench of anywhere between one and three judges, or, in rarer cases, a full bench of five or more judges. The case law, therefore, does not permit attributing a single judgment to a single bench.

This structural phenomena of the Indian courts lies behind the second and more important reason for speaking of the "Court" as an entity. A High Court advocate, Jawahar Raja, once described to me something he called the *hava* of the Court. *Hava* in Hindi literally means "air" or "wind," but colloquially is often used to describe a prevailing atmosphere. The *hava* of the Court, he argued, is the sense you get of what the political climate of the Court is, what arguments they are open to hearing and what they won't take. You have a clear sense of it at most times, he said, and it shapes the tactics you take. These tactics, he argued, are not tailored to particular judges – "the bench will just change," he argued, so you "frame your arguments for the Court itself, prepared for whomever you will get."[111] A recently retired judge of the Delhi High Court, Justice A. P. Shah, echoed Raja's thoughts. "Judges are very aware of what the other is saying," he said, "you notice trends in judicial judgments and you have a sense of where the Court is in periods of time."[112]

In this part of the Chapter, I look at three key frames within which evictions come to be determined as the public interest: the City as Scale, the City as Crisis and the City as a Governable Space.

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[111] Personal Interview, dated 04.05.2011.
[112] Personal Interview, dated 06.05.2011.

The City as Scale: Reframing and Rescaling as Techniques of Government

The construction of scale, argues Neil Smith, is a "social process, i.e. scale is produced in and through societal activity which in turn produces and is produced by geographical structures of social interaction" (Smith 1992). This continual production and reproduction of scale express, argues Smith, "the social as much as geographical contest to establish boundaries between different places, locations, and sites of experience." Within the case law on evictions, this production is part of the techniques of government used by the Courts. The Courts produce the city as the scale at which the "pressing concerns" of public interest must be diagnosed and defined. Simultaneously, this is then the scale at which interventions, judgments and solutions must be conceptualized and implemented. It is the particularities of the production of this scale, I argue, and the shifts they entail in managing competing rights claims within the determination of public interest that enable evictions to occur through the Courts in PILs. Two techniques are key to this production, what I am calling *rescaling* and *reframing*.

Rescaling

Let us return to the case of *Hemraj.[113]* In this case, the Delhi High Court takes a local and located problem of the movement of heavy goods traffic on a particular street and argues that the matter of public interest is, in fact, traffic in the city of Delhi *per se.* Stepping far beyond the single stretch of road that was the focus of the petition, they spoke of how "with every year the problem of traffic will increase with addition of new vehicles." They appointed a committee that would report on other obstructions to traffic *anywhere in the city*. The commissioners of the Court – its "eyes and ears" – thus travel to different parts of the city far beyond Deragaon, the urban village where the petition and Mr Hemraj himself had begun their PIL journey. The committee's reports define and demarcate the problem of "traffic in the city of Delhi." As they name streets, roads, neighborhoods, settlements, fallen trees, narrow interchanges and encroachments, each becomes visible within the Court and is included within the anvil of the petition.

The Courts' directions changed appropriately: "A direction is also issued to Government of Delhi to study the problem of traffic passing through University of Delhi'; or "a comprehensive travel plan is needed as Pragati Maidan, Zoo, Supreme Court, Patiala House, National Stadium, and other important institutions and buildings fall in this zone and therefore let a comprehensive plan be prepared by the Central Roads Research Institute."[114] It is a Court committee's report that brings Nangla within the purview of the *Hemraj* judgment and Nangla isn't the only *basti* to be noticed. In orders passed in another hearing, the Court issues notice on a different *basti* in yet another corner of the city: "The Committee has also brought to the notice of this Court that large scale encroachment exists at the road from Nangloi to Mundka Village which is encroached by a large number of fruit/vegetable vendors, timber merchants and

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[113] Supra, fn 71.
[114] Orders of 21.12.2001.

building material sellers. The road requires widening. A direction is issued to Municipal Corporation of Delhi to remove all the encroachments from Nangloi to Mundka village on the main road and for the purpose of widening the road."[115]

Hemraj is just one example of how the Court produces the city as the scale of its gaze, diagnosis and intervention. In *Maloy Dhar,*[116] the Delhi High Court spoke of waste management and performed a similar shift by saying: "this is not a problem limited to the petitioners, it is rampant all over Delhi. Therefore, we call upon the local authorities, Municipal Corporation of Delhi, New Delhi Municipal Corporation, Delhi Cantonment Board and the Delhi Development Authority to show cause as to why action should not be taken against them for non-implementation of the provisions for waste management in the city."[117]

The case that exemplifies the transformation of local petitions into large-scale urban interventions, however, remains *Kalyan Sanstha vs Union of India*[118] [henceforth, *Kalyan Sanstha*]. Infamous as the case in which large scale 'sealing' drives against unauthorized construction or use were ordered by the Delhi High Court as well as the Supreme Court of India, the original petition in *Kalyan Sanstha* seeks only the cancellation of building licenses in Patel Nagar and Karol Bagh, two residential neighborhoods in central Delhi that have been heavily commercialized over the past two decades. Yet what is more remarkable is that the petition in *Kalyan Sanstha* reproduces almost entirely and directly quotes at length is a previous case filed by a resident of the same neighborhood. The resident – Kumari Sabharwal – lived in No 22/66 Patel Nagar. Her neighbour, the owner of No. 22/67-68 Patel Nagar was building an extra floor in his house contrary to the provisions of the Master Plan and the building codes for the area. Kumari Sabaharwal went to Court, and the Kalyan Sanstha Social Welfare Organisation followed her, ten years later. The largest drive against unauthorized construction in Delhi that resulted in city wide sealing and demolition drives began as quietly as a petition filed by one neighbour against another.

In hearing the case, however, the Delhi High Court argued that the question of public interest in *Kalyan Sanstha* was the "never-ending drama" of "illegal encroachment" in the "this capital city of our republic." All buildings with any unauthorized construction or any unauthorized use are thus implicated in the petition. Critically, the Courts' orders are then not limited to the two neighborhoods that the petition invokes but are city-wide – "to remove all encroachment on public land and demolition of unauthorized construction undertaken after 1.1.2006" – and include instructions to Banks (to not extend home loans for illegal construction), to the electricity and water utilities (to not extend connections without verifying the legality of the unit) as well as to the municipal and urban developmental authorities (to demolish unauthorized construction and remove encroachments). The Court is clear that its interventions must reproduce the scale in which it has identified the problem: "No unauthorized construction can be allowed in any part of Delhi."

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[115] Orders of 01.03.2006.
[116] Supra, fn. 108.
[117] Orders of 21.04.2004.
[118] Supra, fn. 78

This movement occurs in almost every petition in the case law on evictions. It is the Court, rather than the originating petitions, that produce the city as the scale at which the question of public interest should be determined and where solutions and interventions must be implemented. I call this process *rescaling*. As the Court abstracts particular, located petitions to questions facing the city at large it allows one of the most paradoxical aspects of the PIL: one can be subject to the orders of a litigation of which one wasn't even a part, in which one wasn't consulted, or given the opportunity to be heard. The first time that residents of Nangla heard about *Hemraj* was through the Courts' order of demolition. This has, as Chapter Four will argue in detail, critical implications for resistance but also effectively erases Nangla's voice and presence in the determination of public interest. It prevents, in other words, any other imagination of Nangla except as an obstruction of the right of way of commuters on the road from Pragati Maidan to Noida. Competing claims to rights are not then deliberated, managed, or even adjudicated within the Court – they are foreclosed.

The abstraction that rescaling allows makes the Court's gaze on the City ironically similar to that of a rational, comprehensive Master Planner – seeing the city in its entirety as a unified object that can be defined, visualized, organized and controlled, just as it reduces different settlements, locations, sites and actors to abstracted units that can be adjusted according to what Tim Mitchell once called "principles true in every country" (Mitchell 2002). The production of the city as the scale at which public interest is to be determined is not just concerned, however, with the socio-geographical hierarchy of neighborhood versus city but also with how the question of public interest itself changes through the production of this scale. It is to this question that I now turn.

Reframing

The second technique that the Court uses is to cluster a set of different PILs together and determine, or *reframe*, what the substantive, shared question of public interest is. Reframing is thus a process of clustering multiple PILs into a single case that I argue substantively changes and at times even radically alters questions of public interest as voiced by individual petitions. In most cases, reframing occurs alongside the rescaling of these petitions from their particular and located claims to the city *per se.*

In the judgment delivered in *Pitampura Sudhar Samiti vs. Government of the National Capital Territory of Delhi*[119] *(hereafter, Pitampura),* for example, the Delhi High Court combined 63 different petitions, and argued, "that the issue involved in the about the existence/removal of the Jhuggi Jhopri clusters[120] in Delhi." The argument made was that these PILs raise, more or less, the same substantive question of public interest. Here, again, different local petitions that had a range of relationships to the *bastis* that appeared in their petitions were reduced to a single, city-scale question of the existence of "jhuggi-jhopries" in the first place. The Court chose three "lead petitions" – two that represented petitions that "highlighted the problem of existence of JJ Clusters and

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[119] Petition was filed as CWP 4215 of 1995. Judgment was delivered along with multiple other PILs on 27.9.2002. All citations are from final orders of that day.
[120] Jhuggi Jhopri Clusters, or JJ Clusters, are the planning term used to characterize what are commonly called "slums" but what I call "bastis." See Chapter One for a detailed anlaysis of these terms as well as of housing typologies in Delhi.

prayed for their removal" and one that represented petitions that, "are filed by or on behalf of Jhuggi Jhopri clusters who either want to continue in the same clusters and demand better facilities or are claiming their rehabilitation."

Reframing through clustering, just like rescaling, erases the specificity of each petition – of details about claims, prayers, contexts, the petitioner's own perception of the question of public interest she is raising or, indeed, how they argue that they represent a "public" at all. The two lead petitions mentioned above as the anti-*basti* position are said to represent a cluster of petitions that "are mostly filed by various resident associations of colonies alleging that after encroaching the public land, these JJ Clusters have been constructed in an illegal manner and they are causing nuisance of varied kind for the residents of those areas." Yet even these two lead petitions that are meant to represent, in a sense, the same side of the deliberation on public interest are remarkably different in their contexts, histories and their relationship with the *bastis* that they mention.

In the first of the lead petitions— *K. K. Manchanda vs Union of India* (hereafter, *Manchanda*)[121] – the writ petition had complained of the inaction of the municipal authorities and the Delhi Development Authority in protecting a park in a colony called Ashok Vihar. The petitioner complained against the misuse of "the green belt as an open public lavatory" by residents of a nearby *basti*. Yet Mr Manchanda and the residents he represents locate and explain these actions within the petition they file: "there has been no provision of public toilets for the people residing in these jhuggies as a result these people make use of this green belt for easing themselves throughout the day." In fact, he goes on to berate the Municipal Corporation for not constructing these toilets. In his petition, Mr Manchanda is seeking merely a resolution of the restoration of the green space through the construction of public toilets in the *basti*. He does not, at any time, ask for its eviction.

In the second lead petition was *Pitampura* itself. Here, the matter at hand is indeed again the encroachment of an open space within a residential neighborhood. Like in *Manchanda,* the petitioner in *Pitampura* complains that the "slum dwellers defecate all around their clusters on the roads and in the parks." Yet unlike in *Manchanda*, the petitioners in this case argue that "slum dwellers" do so not because they have no choice but instead are without "any regard to the safety of the public at large." The petition speaks of "bonafide residents" who are living in a "highly unhealthy, disturbing and insecure atmosphere" because of "slum dwellers who have no right, title or interest in the said land and are merely trespassers." The petitioner goes on to describe the "illegal construction" of the slum dwellers that are "converting their sheds into concrete structures" along with "openly stealing electricity from the main transmission lines." Even the mere presence of the poor – including little children – draws the petitioner's ire: "many dwellers are sitting or sleeping on the roads most of the time in front of their jhuggies. The children of the jhuggi dwellers have become a nuisance…. They always play on ramps and in front of their houses. They often uproot the plants, scribble

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[121] K K Manchanda v Union of India CWP 531 of 1990. Final orders were given in the petition along with *Pitampura* on 27.9.2002. See supra, fn. 119.

obscene words on the gates/walls/floors of the residents and further harass the residents by pushing their bell buttons."

The starkest difference in these two petitions that raise the "same" substantive question of public interest is when, like the petition in *Manchanda* had suggested, the Municipality actually begins to build public toilets in the *basti* in response to the petition in *Pitampura*. The petitioners in *Pitampura*, rather then feeling like their problem may be eased, argue that they are "shocked to know that the [construction] is being done for the proposed lavatories to be constructed in the public park for the jhuggi dwellers." The petitioners, on seeing this construction accuse the municipal authorities of "open discrimination between the law abiding bonafide residents of the area and the encroachers of public land by openly favouring the jhuggi dwellers and depriving the bonafide residents of their essential public civic rights as per the constitution of India."

Reframing and rescaling together thus produce the city as a scale that distances the Court from the sites, contexts, and particularities of actual petitions. In doing so, it is the "public" itself that gets redefined. The "public" at hand is not the residents of the colony in *Hemraj*, for example, or Mr Manchanda's neighbours, but the body politic of the city at large. The competing claims to rights, space, needs, resources and entitlements are thus to be evaluated not between the residents of *a* neighborhood and *a basti* around *a* park, but between the "poor," "slum dwellers" and "jhuggi dwellers" who live in "*bastis*" and others – "bonafide residents" or "citizens" – at the scale of the city itself. This abstraction allows a particular deliberation of the public interest. Such a process of deliberation invisibilizes *bastis* like Nangla and other settlements that the Courts' orders evict – *bastis* whose literal and discursive absence within the Court marks the exclusions and consequences of how competing rights claims are adjudicated and managed in the name of public interest.

Reframing and rescaling raise a set of questions for our analysis: if the Courts determine the substantive question of public interest and do so through the production of the city as a scale at which public interest is to be determined, then how do they see the "city" they produce? What are the "discursive fields," in other words, within which the city is produced and understood as an object of government? What is the relationship of production with the "moral justifications" of government as exercised by the Courts? In the next section, I argue that the city is imagined and created within the Court as a site marked by a particular crisis – one marked by the absence of "planned development" and caused by failure of what the Courts call "Government."

The City as Crisis: Encroachment and/as the Failure of "Government"

In PILs that led to evictions between 1990-2007, the city is repeatedly described and created as a site of crisis. In this section, I argue that this crisis is part of a judicial governmental rationality. In other words, it is a basis on which government is, to use Rose's phrase, "legitimized in relation to truth" (Rose, 1999). Rationalities, Rose reminds us, have an epistemological character, i.e. they are "articulated in relation to some understanding of the spaces, persons, problems, and objects to be governed" (1999: 26). The crisis is part of creating such an "understanding" of the city as such an

object. It embodies the city as it is made visible within the Court and becomes the context in which the Courts' intervention into the city are understood and legitimized.

How do we understand the crisis *of*, *in*, and even *as* the city? Within the case law on evictions, the crisis of the city is repeatedly defined as a failure – pressing, immediate, and urgent – of what the Courts call "planned development." This failure, they argue, is the primary question of public interest, one that forecloses other claims, narratives and contestations. What is this "failure"? Two intertwined elements form the answer: (a) what the Courts term as 'encroachment'; and (b) the failure of what the Courts call the "Government," i.e. the world of policy, institutions of representative and electoral politics, and statutory public bodies including city utilities, municipal authorities, and developmental authorities. For the rest of this Chapter, I refer to this particular notion of "Government" in quotation marks to distinguish it from my use of government as an analytical concept defined earlier.

'Encroachment'— the 'illegal' and 'unauthorised' occupation of land, unauthorized construction in individual building units, and the violation of permitted land use, especially within residential colonies— is, for the Courts, the most visible symptom of the failure of planned development. It is what separates the complexities of the real city from the imagination of the planned city – it is the multiple disjunctures between the city and its plan. The Courts perform a particular reading of these disjunctures— one that marks them as scars, gaps to be filled, violations that must be undone.

Vyjayanthi Rao has argued that in thinking about "slum as theory," one must challenge the reduction of the "slum" to a "spatial and demographic form" by thinking instead of it more as a construct that "straddles the conceptual and material forms of city-making" (2006: 231). Both the "slum" and "encroachment" perform the work of city-making within the Court. When the Court argues that the failure of planned development through encroachment turns the city into a "slum," it creates the slum as a shorthand of what Rao calls "the distortion of urban substance" – of all that is not planned, not orderly and, therefore, neither legitimate nor desirable. The problem that the slum represents then shifts. It no longer represents the vulnerability of its residents. It no longer marks poverty. It no longer marks the history of a failure to build adequate low-income housing. Its residents, their lives and histories, stand reconfigured and reduced to the land the settlement sits on, the zone it occupies in the plan, and the colour of that zone on the Master Plan. From a *basti*, it becomes a slum – something whose erasure is an act of "good governance," of order, and of public interest.

Like the negative of a photograph, it is through encroachment then that planned development itself is defined – as that which stands undone. What the Delhi High Court in *Maloy Dhar*[122] calls the "menace of encroachment" figures as a central and pressing concern in the case law on evictions. The encroachment of public land "acquired for the planned development of Delhi," argues the Delhi High Court in *Okhla*,[123] is "the very anti-thesis of the concept of planned development." The "whole concept of urbanized

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[122] Supra, fn. 108
[123] Supra, fn. 79

development in land has almost collapsed" in Delhi, says the Court. It is almost as if, they say, "any person can sit where he wants."

The city, in judgment after judgment, appears as a site marked and threatened by this sense of collapse at a time of great transition. "No doubt," the Court argues in *Pitampura*, the "city is growing at an unprecedented pace." This pace, however, is marked by the "haphazard development" and "irrational policies" described in *Okhla* that stand alongside the "totally haphazard and unplanned growth" in *Joginder Singla & Anr vs Municipal Corporation of Delhi*[124] (hereafter, *Joginder Singla*) to together diagnose the "complete breakdown" (*Kalyan Sanstha*) and the "degeneration" and "decay" (*Pitampura*) of the city. The city, the Court argues in *Kalyan Sanstha*, has itself been "turned into a slum."

In thinking about the 'slum,' there are two familiar urban anxieties that particularly mark the Court's concerns: land and migration. Land, argues the Court in *Okhla*, is "the one thing that cannot be multiplied." Land in and around Delhi, they argue, is "especially scarce." This anxiety around land is one of the primary markers that "matters have come to a head." In different judgments, the Courts' concern with the encroachment of public land appears to be connected to a changing perception of the value of land in itself. In *Maloy Dhar*, the Delhi High Court argues that, "the Delhi Development Authority cannot allow *valuable* land to be encroachment like this" [emphasis mine]. In *Satbeer Singh Rathi vs Municipal Corporation of Delhi* [hereafter, *Satbeer Singh*]:[125] "In Delhi, there is acute shortage of land … the land under dispute in the petition is prime government land which has been encroached upon by the petitioners unauthorizedly." More starkly, the Court argues that encroachment cannot be permitted because "land is urgently required for public purpose." The "scarcity" of land, as I shall argue later in this Chapter, is not just a question of physical availability but of the opportunity cost of its use in the context of a changing, de-regulating and increasingly valuable land market.

The Courts concern with encroachment specifically in the form of a *basti* feed fears of the scarcity of land with an older anxiety around migration that is also pivotal in marking the threshold of crisis. When the petitioners in *Joginder Singla* urge the Delhi High Court to protect them from what they call "the ill-effects of urbanization," the Court responds with empathy for the petitioner's trepidation at a time of rapid urban change in Indian cities. In *Okhla,* they argue that, "there is a is a flow of population to Delhi but Delhi cannot accommodate such continuing number of persons pouring in from various parts of the country." In *Satbeer Singh,* the sense of being undone grows: "with a growing population and migration to cities in search of jobs, teeming millions are added to the Metropolitan City of Delhi each decade. There is a wide gap between the demand and supply of housing. The gap is far increasing." In *Pitampura,* the courts see "this influx of people from all over the country into Delhi" as the cause of the "rampant construction activity, legal and illegal." In the end, the Court seems to want to simply close the city's gates: "Delhi with its present population of twenty million people can take no more."[126]

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[124] The petition was filed as CWP 1397 of 2001. Final orders delivered on 29.08.2002.
[125] Satbeer Singh Rathi vs Municipal Corporation of Delhi (2004) 114 DLT 760
[126] From *Okhla*. Supra, fn. 79.

I return in the conclusion of this chapter to these fears about land and migration and their relevance in understanding the Courts emergence at this particular political economic moment in Delhi. For our purposes in this section on examining the crisis as a rationality of government, however, I turn at this point to the work done by the idea of "encroachment" in embodying the failure of "Government."

The Failure of "Government"

In *Hemraj,* the Court, frustrated with its orders not being implemented speedily enough, says: "the drama of encroachment goes on unabated. Our direction in this regard for the removal of the *jhuggies* [houses in the *basti*] has been flouted with impunity as detailed in our order dated 12.12.05. We had earlier issued notice to Special Secretary (Power) and the Commissioner of Police, but the main culprit seems to be the Additional Commissioner (Slum and JJ Dept) of the MCD."[127] It is this, most often, how authorities and members of the "Government" appear within the Court – as 'culprits,' the subjects of notices, summons and, as was the case in the order cited above, accusations of contempt of the Court. Municipal and development authorities, public utilities, and the police appear, both in the petitions from the litigants and the judgments by the Judges, somewhere between incompetence, at best, and malfeasance, at worst. Elected representatives of the city and central legislatures are rarely directly mentioned by the Courts although I will argue in the next section that the Courts dismissal of "policy" is directed precisely at them. Petitions and orders alike are underscored by the failure of municipal and developmental authorities to deliver basic services, implement policies and plans and deliver what different residents see as their rights.

Petitioners for and against eviction are unflinching in their mistrust and dismissal of the Municipal Corporation of Delhi, the New Delhi Municipal Corporation as well as the Delhi Development Authority even as they continue to direct their demands to them in a parallel to what Blom Hansen and Stepputat have called a "paradox of the inadequacy and indispensability" that they argue defines many post-colonial states (Blom Hansen and Stepputat 2001). While petitions representing the poor accuse the authorities of failing their constitutional and statutory obligations to build housing for the poor and anticipate migration and development, other petitions accuse the authorities of being inaccessible and unresponsive, at best, and corrupt and criminal at worst. In *Pitampura,* petitioners seeking the removal of *bastis* accuse the authorities of "sleeping over the various representations of residents" but soon go further and allege them of possessing both "political reasons and malafide considerations" to avoid fulfilling their "statutory duty." In *Jagdish & Anr vs Delhi Development Authority*[128] *(hereafter, Jagdish),* the petitioners seeking the prevention of eviction claim that the Delhi Development Authority "in abdication of its statutory functions under the Delhi Development Act has not provided for housing for low-income/city service personnel families."

The judgments are, if anything, harsher and, more importantly, particular in locating the failure of "Government" as the origin of encroachment as well as the mechanism of its reproduction. In *Pitampura,* the Judges argue that, "it does not require any great

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[127] Orders of 01.02.2006.
[128] Jagdish and Anr vs Delhi Development Authority CWP 5009 of 2002. Final orders on 14.07.2006.

intelligence to know that it is because of the negligence, carelessness or rather active connivance of the officials of these departments as well as others at the helm of affairs that these encroachments take place and slums are created." In *Hemraj*, the Courts argue that encroachments occur "as a result of the passing the buck from one government agency to another." As the agencies "squabbled," they argued, "this gave ample time to the encroachers who further proliferated on the said land unchecked by any agency as if it was no man's land." It seems, the Courts argue, "that the Delhi Development Authority itself does not have a plan."

In *Joginder Singla v Municipal Corporation of Delhi*[129] [hereafter, *Joginder Singla*], the Court reminds the senior officials of the DDA and the MCD, which it has summoned, that the constituent acts that made each of them into statutory bodies contain provisions for the protection of lands from enforcement and give both agencies wide powers of demolition and enforcement. After several pages of citing each of these sections and sub-sections of the DDA and MCD Acts, the Court asks: "how is it, when the aforesaid provisions are on the statute books" that "such encroachments and huge unauthorized construction" have taken place?

If encroachment is the most visible manifestation of the crisis of the city for the Courts, then the failure of "Government" is both its cause and the agent of its reproduction and expansion. What then is to be done? It is here also that the Courts see their own emerging role. In *Joginder Singla,* the Judges within the Delhi High Court argue: "it is observed that action is normally taken by these authorities only when such petitions are filed and the court issues directions. It is only then that the administrative machinery of the Municipal Corporation of Delhi and the Delhi Development Authority is activated." What happens, the Supreme Court asks in *MC Mehta*,[130] "when violators and/or abettors of the violations are those, who have been entrusted by law with a duty to protect these rights?" The task, they answer, "becomes difficult" but, more importantly, "requires urgent intervention by the court so that the rule of law is preserved and people may not lose faith in it finding violations at the hands of supposed implementers." The Court, the Judges argue, "cannot remain a mute spectator" – the "enormity of the problem" does not mean that a "beginning should not be made to set things right."

The Court thus legitimizes its interventions into the city precisely through a narrative of failure, i.e. the failure of "Government" to manage and control the city and protect it against the threat and reality of encroachment. This failure allows the Court to position itself as the a powerful urban actor, legitimizing its interventions within the city and its attempts to actively subject the executive to its power. In fact, this subjection becomes framed as inevitable and necessary precisely because of the portrayal of an inefficient, corrupt and unreliable "Government." This shift marks a clear break from PILs in the 1980s, where as scholars have noted the Courts may have held the "Government" responsible for failing to do its duty but they saw their role as being limited to the determination of this failure. Redressal and further response remained the responsibility

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[129] Joginder Kumar Singla v Municipal Corporation of Delhi CWP 1397 of 2001. Final orders on 29.08.2002.
[130] Supra, fn. 75. From Final Orders on 16.02.2006.

of executive authorities – the work of policies and programmes, the work of "Government."

From the mid-1990s within PILs in general and within case law on evictions in particular, the Courts emerge as a site of intervention, administration and decision-making in and of themselves. I argued earlier that it was in the *Vineet Narain* case in 1993 that the Supreme Court first created the innovation of *continuing mandamus* within PILs – the system of regular reporting on the implementation of the orders of the Court often for indefinite periods of time. There, as within case law on evictions, judicial legitimacy was built on of the failure of "Government." Merely issuing orders to the "governmental agencies," the Court argued, would be "futile."

It is in *Kalyan Sanstha* that the "Government" first objects to the Courts creating what it calls is "a parallel administration." The Municipal Corporation of Delhi files applications within against the Courts orders in the case.[131] It argues that:

> By order dated 23rd March, 2006, this Court appointed Court Commissioners giving direction to the Commissioner of MCD to take immediate action on the receipt of the report of the court commissioners and further giving an authority to the court commissioners to directly inform the Commissioner of Police. It is, thus, submitted that what has been put in place by these orders is virtually a parallel administration.

The Courts rejects the MCD's argument, responding swiftly:

> Various proceedings/orders passed by this Court in this very case from 23rd July, 2003 will show that those who are responsible to comply with the statutory provisions of the Act have not only failed to perform their duties but were found to be indulging in permitting illegal and unauthorized construction and commercialization of residential properties. It has become apparent that there has been a complete breakdown of municipal administration.[132]

The Efficiency of Contempt

The Courts narrative of the failure of "Government" is given legitimacy precisely by the efficiency of its own urban interventions. What makes this implementation possible? I am not suggesting here that the court orders don't get flouted or delayed. Yet Rajamani (2007) reminds us that PILs are popular precisely because of the perception that "things get done" within the Court. This chapter began with a series of urban interventions – from the conversion of public transport into CNG, the relocation of industries, the evictions of 'slums' – that are a transcript of the Courts ability to carry out their intentions. Indeed, looking at PIL cases with respect to the environment, Rajamani argues that, "judicial intervention resulted in improved governance and delivery of public services, and enhanced accountability of public servants." It is "little wonder" then, she argues, "that the courts are the natural choice for individuals who wish to direct the executive to perform its duties" (2007: 319).

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[131] CM 1238/2007 and 239/2007 in *Kalyan Sanstha.*
[132] Orders of 10.09.2008.

The debate on why judicial orders enjoy such legitimacy is a complex one. For our purposes here, however, on understanding the failure of "Government" in the context of evictions, I want to point out one key judicial tool that ensured the implementation of evictions that, once again as Chapter Four will argue, has critical consequences for anti-eviction movements and resistance. This instrument is the threat of contempt. An anecdote yet again from *Hemraj[133]* will make the role of this instrument in producing, exemplifying and reproducing the failure of "Government" clear.

The first time that the Delhi High Court ordered the eviction of "the encroachment on the left side of Bhairon Marg on the way to Noida," or Nangla, as the *basti* was called outside the Court, was on the 21st of January, 2001, nearly four years before evictions at Nangla actually took place. In a hearing in December, 2005, the Court returned its attention to Nangla. "Even after four years of the passing of the said order," the judges argued, "no action have been taken in spite of the fact that the Court on several other occasions have passed directions." The Judges say that their last reminder when "we issued directions to the Engineer in Chief, Public Works Department, to identify as to who was to take action for removal and report to the Court." That direction, they argue, "has fallen on deaf ears." This "non-compliance of the directions for removing the encroachments in this area," the Court argued, amounts to a willful disobedience of the orders passed by this Court."

The Courts response is swift:

> We issue notice of contempt to Commissioner of Police, Engineer in Chief of PWD as well as Special Secretary (Power), GNCTD, as to why action for committing contempt of the orders passed in this court should not be initiated against them.[134]

On the next hearing, they issue another notice to who they determine is the real "culprit"—the Additional Commissioner of the Slum and JJ Department of the Municipal Corporation of Delhi. They summon him: "We make it clear that on the next date of hearing if the orders passed by this Court are not complied with by the MCD, the Additional Commissioner, Slum and JJ Wing, shall remain present in the Court."[135] Importantly, notices of contempt are not issued to institutions but to particular holders of public office. The notice is often used alongside the power of the Court to summon the physical presence of these senior officials of "Government." It is a powerful set of techniques: evictions at Nangla are completed three months after the notice of contempt is issued and the Additional Commissioner is summoned to appear in person in the Court. The Court withdraws the contempt charge saying that, "it is accepted that no willful disobedience has been committed by the officers in relation to which contempt notice was issued."

I cite this story not to indicate that Court orders are implemented solely because of their disciplinary and punitive power. Instead, I suggest that the idea of practice of

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[133] Supra, fn. 71.
[134] Orders of 14.12.2005.
[135] Orders of 26.07.2006.

contempt plays an additional role in our analytics of government. The physical summoning of senior officials of "Government," often from across different institutions and agencies, is part of the process by which the Court performs its legitimacy as an authority powerful enough to ensure implementation – to overcome, in other words, the very root of the urban crisis it has diagnosed. The discursive fields created by the Court – of the twin failures of planned development and "Government" – stand performed, reified and legitimized. When Sathe (2000) argues that there are few complaints about "judicial governance" among "people," it is this ability to hold "Government" accountable that he is primarily referring to.

The crisis of the city – visibilised by encroachment and understood as the failure of planned development and "Government" – legitimizes judicial urban interventions. The need to address these intertwined failures, to restore order, and to intervene in the idiom and temporality of crisis becomes not only the primary meaning of public interest but also an ethico-moral imperative, what Rose might term the moral form of the rationality of judicial government. This imperative reads the judicial action and the rule of law itself as an act of restoring order and governance to a city in crisis. It is not coincidental that, as they order evictions, the Courts argue, as they do in *Pitampura*,[136] that, "no city, no democracy can survive without law and order. Public interest requires the promotion of law and order, not its degeneration and decay."

Yet even if the Courts see themselves a legitimate urban actors and create a governmental rationality that allows them to intervene into the city, what is the basis by which the Court decides what to do? If encroachment is the anti-thesis of Planned Development, what is the latter meant to be? It is here that the final component of an emerging governmental rationality falls into place: an epistemological shift that represents and reframes the planned development of the City in terms of what they call "the legal position" of the Delhi Master Plan.

The problem is not "the absence of law," argues the Delhi High Court, "but its implementation." In *Joginder Singla*, they argue that the crisis of the city occurs despite, "Master Plans prepared for the city and in existence for last more than 40 years wherein the planners have envisioned planned growth with beautiful city in mind." The law in question then is the Delhi Master Plan. The beautiful city is the planned city, the city of order, the city that looks like its Master Plan – the city without encroachment. Having rescaled the determination of public interest to the city and argued that they are the legitimate actors of urban government, the Court constructs the basis of a regime of rule: the Master Plan. To do so, however, they must transform the Master Plan itself.

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136 Supra, fn. 119.

The City as Governable Space: The 'Legal Position' of the Master Plan

> *It is because of the Courts that people finally know that the Plan is like law. It is because of them that it has some respect.*[137]

To govern, argues Nikolas Rose, it is necessary to "render visible the space over which government is to be exercised" (1999: 36). Acts of mapping, drawing, scaling and rendering visual, therefore, are particular acts that spatialize government. Within case law on evictions, the Court privileges a particular representation of the city: the Delhi Master Plans, first the Delhi Master Plan '01 (hereafter, DMP '01; issued in 1990) and then Delhi Master Plan '21 (hereafter; DMP' 21, issued in 2007). Yet how does the Court use a document produced by the one of the authorities of the very "Government" that it accused of failure? What is the life of the Plan, in other words, within the courtroom?

The Legal Position of the Plan

In a series of judgments within the Delhi High Court as well as the Supreme Court of India, the Master Plan attains a legal, enforceable and statutory character. The Supreme Court judgment most commonly citied as precedence for treating the plan as statutory law is *MC Mehta vs. Union of India.*[138] The judgment indicts – in the strongest terms – the "Government" for its failure to implement the Master Plan. The representatives of the "Government" protest and argue that the plan is "only regulatory in nature." Being unable to implement regulatory aspects of policy, they argue is not a violation of law. The courts respond sharply:

> the provisions may be regulatory but all the same, they are mandatory and binding. In fact, almost all the planning provisions are regulatory. The violations of the regulatory provisions on massive scale can result in plans becoming merely scraps of papers. That is the ground reality in the country. *None has any right, human or fundamental, to violate the law with immunity* and claim any right to use a building for a purpose other than authorized [emphasis mine].[139]

Further, the Delhi High Court argued, an argument that plans are only "broad guidelines and cannot be taken as specifics" is "clearly misconceived and not based on a correct understanding of the legal position of the Plan."[140] The legal position of the Plan has become common sense. From *Jagdish*: "it is now well settled that a plan prepared in terms of statute concerning the planned development of a city attains a statutory character and is enforceable as such." What does it mean for the plan, an instrument of policy, to become "law"? What is, in other words, the "legal position" of the Plan?

The Plan in its legal position inhabits a different life from the document produced by the Delhi Development Authority. Here, it is understood as static; a final, codified document stripped of its own internal mechanisms of review and change, removed from

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[137] Personal Interview with AK Jain, former Director of Planning, Delhi Development Authority.
[138] Supra, fn. 75.
[139] From Orders of 16.02.2006.
[140] *Jagdish.* Supra, fn. 128.

its relationship with the city as it actually exists, and erased of its history of implementation and its undemocratic and opaque drafting process. It must be implemented, *as it is*, despite any impact on "any right – human or fundamental" even if its provisions may violate precisely these very human or fundamental rights, especially of the poor. Indeed, in *Joginder Singla*, the Delhi High Court reversed a common fundamental rights claim made by the urban poor, i.e. the evocation of Article 21 and the right to life and livelihood. In the landmark *Olga Tellis* case in 1985, the Supreme Court had argued that displacing pavement dwellers violated their Right to Life since life could not be read without livelihood. The pavement, the Supreme Court had argued, was both life and livelihood for those who lived and survived on it. Nearly two decades later, the Delhi High Court argued that it was, in fact, "any act of attempt which amounts to nothing but mischief with the Development Plan" that was "in itself vocative of Article 21 of the Constitution of India."

In its legal position, the Plan's boundaries both create and bind the city as a governable space. The Master Plan spatializes governmental thought. Its categories of land use and ownership – in their visual, literal, two-dimensional allocations –reduce the complexity of the city to a neat binary of all that *does* or *does not* ally with the Plan at any given point of time. It becomes the framework, in other words, of the legal and the illegal. In the previous chapter, I used a history of housing in Delhi to show that neat separation of legal and illegal housing in Delhi was itself was one of planning's foundationlist fictions. I argued that it was within illegalities that planning theory must understand the urbanism of Indian cities. Within the Court, however, this history stands erased. Repeatedly, when the history of other existing and older failures of the implementation of the Plan are brought to the Court's attention – say, for example, the failure of the executive to build adequate low income housing – the Court repeats a singular refrain: "that is not our concern."

The 'legal position' of the Plan is what James Scott describes as a "simplification" – a "synoptic view" that uses a "narrowness of a field of vision" to impart a logic on reality as it is observed. Simplifications, he argues, "collapse or ignore distinctions that might otherwise be relevant." They reduce an "exceptionally complex and poorly understood set of relations and processes" to "a single element of instrumental value" (Scott 1998: 77-81). The Plan as seen by the Court is reduced to the spatial order it represents – a two-dimensional system of classification of land use. Perhaps more importantly, it is simplified to what this spatial order represents within the crisis of planned development in the city: a legible, enforceable sense of order. The Court, Sundaram has argued, seeks the "the phantasm of control" typified in Delhi's very first Master Plan and its vision of the city as an urban machine whose parts, movements and intentions could be controlled by the techno-modernist Master Planner (Sundaram 2009).

This simplification of both the Plan and planned development is evident, ironically, through what I described earlier as a rare "victory" for social movements representing *basti* residents: *Jagdish*.[141] In *Jagdish*, the eviction of the basti has already occurred. The "victory" is that the Courts awards the right of resettlement to the residents. In *Jagdish*,

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[141] Supra, fn. 128.

the Judges argue, as in other cases, that, "adherence to planned development is unexceptionable." The Court argues that the petitions filed by evicted members of the *basti* "raise significant questions concerning the implementation of the Master Plan for Delhi and their entitlements to Low income housing in terms thereof." In response, the Court determines that, "the broad issue which arises for consideration in the present petition is a consequence of the failure of the respondent to develop adequate LIG/Janta housing in colonies or in peripheral areas which has also resulted in encroachment of public land." It is important to read this judgment clearly. While it acknowledges the rights of the poor to resettlement, it does not question or seek to reverse the act of eviction. Further, it still determines public interest as an adherence to "planned development." It is in its nuanced, historical, aspatial reading of planned development that it departs from the body of PIL case law emerging from the Delhi High Court. Justice Mudgal, in writing the judgment, notes the exceptional status of the judgment himself. He is aware that he is writing against the *hava* of the Court. "This court," he argues, "is aware that on several earlier occasions different benches of this court have deprecated the conduct of the DDA in allowing slums to mushroom on public land." Writing against this body of work, he suggests only, and perhaps as a minder to future challenges to eviction case law within the Court that "perhaps the attention of the court was not drawn to nor did the court deal with the detailed provisions of the [Delhi Master Plan] set out hereinabove."

Plans, not Policies

The Plan allows the Court to position itself clearly against the failure of "Government." The Courts reliance on the Master Plan is explicitly placed against their ire at "arbitrary" policy regimes, selective "regularization," the non-implementation of the Master Plan, and the lack of action against "slums."[142] Implicit in their turning to the Plan is their desire for a regime of urban governance that can be read against an explicit and codified order that can result in a visible and enforceable spatial transformation. Unlike the executive, the Courts need not contend with the democratic aspirations and needs of the citizens of Delhi. When they say that, "a populist measure need not be a legal one,"[143] it is important to also unearth the embedded reversal of the same thought: a legal measure need not be a popular one.

The Plan stands both as law and as ideal, the singular basis and legitimacy of the Court's intervention into the city. It becomes the benchmark of how the city must be ruled in order to escape the crises of infrastructural decay, the breakdown of order, the lack of housing, increasing migration and the proliferation of 'slums.' Within the Court, an ordinary land-use plan becomes a mark of a spatial, aesthetic, social and political urban order that must be attained. The implementation of the Plan becomes not just the mechanism of government but its rationality, a defining component of public interest.

Policy, in fact, is no longer the dominant domain and mechanism of government in the Court's eyes. In *Ambedkar Slum Utthan Sangathan v Municipal Corporation of Delhi,*[144] it

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[142] See Chapter One, in particular.
[143] *Okhla.* Supra, fn. 79.
[144] Ambedkar Slum Utthan Sangathan vs Municipal Corporation of Delhi. CWP 6981 of 2002. Final Orders on 20th December, 2002.

denies petitioners the right to use existing and previous executive policies as any kind of precedence: "the Government comes out with schemes of rehabilitation from time to time. Merely because on earlier occasions some of the slum dwellers at the some other place, on their eviction from those slums, were given a particular kind of flat, is by no means an assurance to all other slum dwellers that they would also be allotted same type of flats when they are evicted from the accommodation under their occupation."

The emergence of the Plan as the desired order of the city and of "planned development" as a rationality of government is highlighted perhaps most starkly by the Court's ire at "regularization." In Chapter One, I argued that unauthorized colonies were often "regularized," i.e. made legal post-facto, often decades after they had been established. Regularised colonies accounted for 13% of the city's population in 2000. This process of entering into the plan and legality long after the occupation and the building of settlements is one, I have shown in Chapter One, defines how rich and poor alike settle the city. Yet it is precisely this process that the Court's emergence into planning and urban governance breaks – the Plan in its "legal position" cannot tolerate regularisation. The seeds of this conflict are seen clearly within PILs. When petitioners in *Welfare Association of Majlis Park vs Municipal Corporation of Delhi*[145] argue within the Court that the executive has just announced the regularization of their homes and hence they are no longer within the Court's jurisdiction as violators of the Master Plan, the Court argues, "the petitioners argument that the matter is beyond the scrutiny of the Court since the action has been regularized by the MCD is untenable." Their views on regularization are clearly expressed in *Kalyan Sanstha:* "Already there are enormous difficulties for Delhiites are facing on account of mushrooming of unauthorized colonies and the process of regularization of the same by the state." The time has come, argue the Courts, "for the Delhi Government to … [prevent] … unauthorized, unplanned, and hazardous structures thereby making Delhi a complete slum."

Two Readings of "Good Governance"

> A welfare state is expected to care for its citizens from cradle to grave. This concept has to change. The role of the State, in today's world, has to be one of regulator. The state has to create an environment of growth and equal opportunity. Thereafter it is for each to prosper or perish.[146]

Debates on "judicial governance" in India – both popular and academic – have been centered on whether the interventions of the judiciary into urban life are within the bounds of its constitutionally mandated functions. The focus, therefore, has been on the appropriate separation of powers between the Executive and the Judiciary. In this Chapter, I suggested a different inquiry. Using an analytics of government, I argued that we must understand instead the rationalities and techniques of governmental practice within the Judiciary and especially within public interest litigation. Through looking at case law on eviction, I argued that the Courts fashion a governmental rationality that constructs the city as a site of a crisis of planned development that is marked by encroachment and caused by the failure of what the Court calls "Government." Finally, I

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[145] *Welfare Association of Majlis Park vs Municipal Corporation of Delhi.* CWP 7758 of 2007.
[146] *Pitampura.* supra, fn. 119.

argued that an alternate rationality emerges: planned development as represented and understood by the Master Plan in its legal position.

In the concluding section of this Chapter, I draw out two intertwined yet autonomous readings of the implications of these rationalities and suggest that they are part of a broader and emergent regime of urban governance in contemporary Indian cities, especially after the restructuring of the economy through liberalization reforms in 1991 as well as the circulation of a global discourse on "good governance" since the late 1990s. I explore what governmental rationalities within the case law on eviction suggest about this broader regime and how they both shape and are shaped by the contemporary political economic moment in India.

"Good Governance" as Reform

The Court's construction of the city in a crisis caused by the failure of "Government" echoes a broader narrative of failure and reform in India. On the scale of the city, this narrative is perhaps best symbolized by the India's largest urban program in its history: the Jawaharlal Nehru Urban Renewal Mission (JNNURM).

Planned through the early 2000s and officially launched in 2005, the JNNURM is a $2bn urban policy intervention that is a flagship programme of the Government of India. It has a particularly and clearly stated urban vision –it seeks to build "world-class cities." The mission statement of the JNNURM is well worth quoting in its entirety: "The aim is to encourage reforms and fast track planned development of identified cities. Focus is to be on efficiency in urban infrastructure and service delivery mechanisms, community participation, and accountability of urban local bodies and para-statal agencies towards citizens." The keywords of the mission – "reform", "efficiency" and "service delivery" – are premised on an increasing role for the private sector in urban development in India and, many argue, a new model of governance itself.[147]

Implicit within the JNNURM is an understanding of the need for a new paradigm of urban governance that is premised, much like the crisis defined by the Courts, on the failure of "Government." This is a narrative that has become increasingly salient within policy dialogues in India over the past decade. Two examples of highly influential and oft-cited urban documents will make this clear – the McKinsey & Co report on urbanization in India and the Government of India commissioned High Powered Expert Committee report on Urban Infrastructure (hereafter, HPEC Report). In both reports, key challenges facing India's urbanization— and the possibilities of what the reports call "inclusive and sustained growth"— prominently feature "governance" as a critical obstacle. For McKinsey, urban governance is one of the five missing elements that are preventing India from building "thriving cities" (McKinsey 2010). The HPEC report is just as categorical: "governance is the weakest and most crucial link which needs to be repaired to bring about the urban transformation so urgently needed in India." The prognosis is dire: "a radical change is needed if cities are to provide a socio-economic

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[147] See jnnurm.nic.in. Accessed 19th April, 2012.

environment that will be inclusive, contribute to a better quality of life, and sustain rapid growth" (HPEC 2011: xxv).

In both the reports, the recommendations for improved urban governance are strikingly similar: corporatization of service delivery institutions, extensive private sector involvement, deregulation of distorted land markets, and the creation of fiscally and politically empowered and accountable urban local bodies within a new framework of "city management." Governance is to be efficient, transparent and accountable, and built on an entirely new institutional foundation. Citizen participation and "third sector" involvement are repeatedly mentioned yet even their agenda is to fix institutional failure: "[Citizens] need to stop asking their political leaders to "fix the roads" and instead also ask them to "fix the institutions that fix the roads," argues the McKinsey report. The HPEC report momentarily acknowledges the possibility of fixing the existing system but then summarily moves on: "Cities could, in principle, improve their management skills and deliver better quality of services, but given the complex web of relationships, often infusion of a new organisation or private participation tends to catalyse success" (2011: 64). The HPEC makes these recommendations as an explicit basis for the "New Improved JNNURM" widely believed to be the blueprint for the second phase of the mission slated to cover the coming decade and extend the mission to many more Indian cities, particularly second tier settlements currently not included in the JNNURM.

Kamath et al have described this new governance paradigm as an "impatient pragmatism" dominated by "the imperatives of getting things done, of 'fast-tracking' India's cities into a post-Third World regime of global cities" (Kamath, Coehlo et al. 2011). Sunila Kale argues privatization and institutional change are examples of "second generation reforms" – those that often have "welfare losses" attached to them and carry the possibility of protest and opposition (Kale 2006). Second generation reforms, argues Robert Jenkins, writing about labour policy in India, are often passed in a process he describes as "reform by stealth" (Jenkins 2004) For Jenkins, the "unseemly underside of democracy" enables those in power to manipulate institutions to pass labour policy reforms by "transferring responsibility for reforms to other levels of the government in India's federal system."

Do evictions ordered in the public interest by the Judiciary – an arm of the State partially insulated from democratic opposition – represent "reforms by stealth"? The case law on evictions certainly suggests that governmental rationalities underlying eviction are both shaped by as well as shape in turn prevailing narratives of the need "radical change" and "reform" in the functioning of "Government." In doing so, as I have argued in this Chapter, they actively create and reproduce this failure. The reframing of the public interest arguably reflects a particular conception of "reform," read at the scale of the city through the idea of planned development. The macro-narrative of failure and reform and the imperatives of "good governance," are then created, urbanised, and legitimized within the Courts. It is here that what Rose calls the moral forms of governmental rationalities within and outside the Courts align to shape contemporary urban governance – ideas of order, efficiency, and transparency inform the urbanization of a macro-narrative of "good governance" and, critically, come to be determine conceptions and politics of the city itself.

The Political Economy of "Good Governance"

"The developmental ideology," argues Partha Chatterjee, "was a constituent part of the self-definition of the post-colonial state in India" (Chatterjee 1997: 277). The state's claim to legitimate rule was based not just on electoral representation but on "directing a program of economic development on behalf of the nation."[148] It was in framing "the administration of development" as the "universal goals of the nation" that post-colonial development broke with colonialism. These two foundations of post-colonial legitimacy – democracy and development – as well as their often conflicting demands were linked, Chatterjee argues, to what is arguably still the post-colonial state's central problematic: "accumulation with legitimation" (1997: 277-279).

While many would argue that both the moment and model of development that Chatterjee is referring to may have passed, the central problematics of his analysis – democracy's entanglement with development, accumulation's with legitimation – and his insistence on the relevance of the state remain, I argue, critically relevant in contemporary India. Scholars of the post-colonial state and of the urban global South have, therefore, rightly criticized what Aihwa Ong calls "Neoliberalism writ large" and its attendant dismissal of the state (Ong, 2006). This critique is not to deny that shifts in political economic systems are not indeed happening, but to shift the question and locate its inquiry: what are the actually existing "processes and effects of neoliberal governmentalization in the post-colonial world?" (Gupta and Sharma 2006). The state, as Jessop argues, is neither bypassed nor excluded in the new global economy. It is actively involved "in developing new accumulation strategies" that are accompanied, he reminds us by the "new governmental rationalities" that are required to sustain "changed articulations of government and governance" (Jessop 1999: 399).

It is here, then, that a second reading is possible. In this reading, the Courts reading of the Plan acts as a mechanism, in a Lefebvrian sense, of abstraction – it makes space appear homogenous by depriving it of content and stripping it of representations other than those of the Plan itself. It "destroys (historical) conditions, its own (internal) differences, and any (emergent) differences, in order to impose an abstract homogeneity"[149] on the city as a space. For Lefebvre, abstract space, as "a political product of state spatial strategies" has a particular function: it makes a rational, economic calculation of value and exchange possible, allowing space to act as a circuit of capital accumulation. It is central, in other words, to regimes of accumulation. It does so not just through state strategy, however, but also through shifting political imaginaries, what Brenner and Elden describe as "new ways of envisioning, conceiving, and representing the spaces within which everyday life, capital accumulation, and state action are to unfold" (Brenner and Elden 2009: 359).

The Courts invocation of planned development, therefore, enable the navigation of a particular conjuncture: the deregulation of the urban land market, the restructuring of the Indian economy after liberal reforms in 1991, and rise of a new political imaginary of

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[148] On this point, see also Gupta 1998; Ludden 1992.
[149] Lefebvre (1991) as cited in Brenner and Elden (2009: 358).

the transformation of the capital into a "World-Class City." This imagination centers on a new paradigm of urban development, one typified within the JNNURM as an infrastructural transformation of the city and a new model of urban management based on corporatized institutions. The failure of "Government" is then rewritten as the failure to enable this transformation, to remove the blockade to a new regime of accumulation.

It is telling here to see the how land reclaimed from eviction sites has been used. Of the 227 eviction sites between 1990 and 2007 described in Chapter One, nearly twenty percent of the sites were indeed reclaimed for infrastructure – new highways as well as the widening of existing roads being the most dominant. Sixteen percent of evicted sites were turned into parks and green spaces. Other significant uses included land cleared for building the new Delhi Metro, for executive institutions and for commercial and office space. The land, indeed, as the Supreme Court argued in *Almitra Patel* has "uses that cannot be denied."

In this reading, governance is, as De Angelis argues, a central mechanism for capital accumulation that enables the "social stability fundamental for capital's accumulation" (De Angelis 2005: 229). De Angelis reminds us that global discourses on "good governance" emerged during the period of structural adjustment and are tied with particular notions of the role of a state that best enables the markets to function. The JNNURM is significantly supported and partially funded by the World Bank, and many of its reforms are precipitated on, for example, the repeal of all Rent Control and Urban Land Ceiling regulations within Indian cities. Its very *raison d'etre*, as described in the mission statement, is to recognize that Indian cities will drive "up to 65% of the national GDP by 2025."

Evictions then are markers of the emergence of a new regime of accumulation, one legitimized through a new articulation of government that is built, as argued above, through the narrative of good governance within and beyond the JNNURM in a moment of political and economic transformation in Indian cities. The Courts reframing of the public interest as planned development then represents a process of commodification; of paradigms of urban development built on new conceptions of value and particularly the value of public land. New urban political economies require new legitimacies, as Jessop reminds us. As in the first reading, the emerging rationalities of the Court are not then just the result of the failure of "Government"— they are also the sites of the production of this failure. The ends, however, differ: the production of failure, in this reading, enables "reform" in a manner that allows the circulation of new registers of value and creates new frontiers of capital accumulation.

Chapter Three

Unmaking Citizens:
Urban Citizenship and the Impoverishment of Poverty

In the northern part of Delhi lies one of its origins. It is called "the city" by those who live within it and the 'Walled City' or 'Old Delhi' by those who live in what came to be known, from the early 20ᵗʰ century, as New Delhi. Old Delhi houses nearly half a million people in an incredibly dense built environment that has both symbolized historical urban form in India as well as challenged modern planning. As a result, for much of the last three decades, it has alternatively been classified as a "slum" under the 1956 Slum Areas Act, a protected heritage zone, or, most recently, a Special Development Area. For nearly a decade, it was all three at once.

In 1982, a redevelopment scheme was announced for parts of Old Delhi, including a neighborhood within it called Kali Masjid. The scheme made residents of Kali Masjid an offer: those who "voluntary surrendered" their houses would be given expedited resettlement into permanent alternate accommodation of 60-70 sq m area in Kali Masjid itself or a nearby location within 2-3 years. In the interim, they would be given transitional accommodation on nearby Minto Road. A set of about forty households – who would come to be described by the Delhi High Court as "slum dwellers" – surrendered their properties. Nineteen years passed in the "transitional accommodation." The promised resettlement never came.

A generation came of age in Minto Road. In 2001, the households received another eviction notice informing them that they were – once again – to be shifted into "transitory accommodations" pending resettlement. No details about the time, nature, or location of the resettlement were given. These households, now organized as the Ambedkar Slum Utthan Sangathan (the Ambedkar Slum Empowerment Coalition;[150,151] hereafter, ASUS), approached the Delhi High Court in July, 2001. They filed a Public Interest Litigation (PIL) that came to be known as *Ambedkar Slum Utthan Sangathan vs Municipal Corporation of Delhi* (hereafter, *Ambedkar*). [152,153] They argued that they had built their lives and those of their children in Minto Road and did not want to move – "our children study in local schools, everyone we know is here." In August, the Court refused to halt their eviction but argued that they must be given permanent accommodations immediately. In October 2002, the Municipal Corporation of Delhi sent a second notice to the households. Permanent alternate accommodation had been found for them – the flats were, ironically, in the Kali Masjid area, the original home of the households from where they had been evicted twenty years earlier. The caveat was

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[150] Dr B. R. Ambedkar is India's most recognized *dalit*, or untouchable/lower caste, figure. He was a freedom fighter and one of the lead figures in the drafting of the Indian Constitution. Dalit movements often invoke his name when mobilizing around the issue of caste and caste discrimination.

[151] The word "Slum" is used in the organizations name as an English word.

[152] Ambedkar Slum Utthan Sangathan vs Municipal Corporation of Delhi. CWP 6981 of 2002. Final Orders on 20ᵗʰ December, 2002.

[153] In referring to legal documents in this chapter, I use short form citations of the name of the petitioner in italics for ease of reading. I refer, for example, to *Wazirpur Bartan Nirmata Sangh vs Union of India* (*2002*) as *Wazirpur*. Where a reported judgment exists, I cite its record. For example, in this case, the citation 108 (2002) DLT 517 is the record of the reported judgment. If a reported judgment does not exist or when I am directly referring to the original petition filed in the case, I use the citation for a petition. Such petitions are then cited often as "CWP" or Civil Writ Petition and are marked to indicate the year in which they were filed. For example, *Ambedkar* is the 6981ˢᵗ civil writ petition filed in the year 2002. Hence, it is cited as CWP 6981 of 2002. When I cite interim orders in a petition that precede a final, recorded judgment, I give the date of the order. For example, "Orders of 29.02.2010."

that these flats were only 24 sq m in area. The ASUS went back to the Delhi High Court arguing that the flats on offer were too small, citing the promise made to them in 1982 of 60 sq m flats.

The ASUS argued that they represented a vulnerable community. They were an association committed "to look after the welfare of the people belonging to the scheduled castes[154] in Delhi living in the slum area." They argued that the resettlement on offer ignored the fact that as members of lower castes they have "their own community life and their own traditional lifestyle and social customs" and therefore "the alternative accommodation to which they are to be rehabilitated has to be one compact area" which the housing on offer was not. They accused the Municipal Corporation of being "totally blind to the needs of this particular class unfortunately having born in scheduled caste families." At one point in the legal petition, breaking with standard legal form, the members of the ASUS seem to address the municipal officials directly: "the size of the flat to which you are forcing us to shift is so small that the very right of decent living in healthy and congenial environment is being denied to us." They argued that as people from the "lower strata of life" they are entitled to protection from a state that "boasts and rather loudly speaks of being a welfare state." It is "strange," they argued, that such a state would "crush" the rights of the poor. The last line of the petition is this: "We request you kindly not to crush us but to rehabilitate us as per assurances."

The claims of the ASUS are familiar ones within Indian politics. Poverty and vulnerability, defined both by a lack of income as well as social marginalization (in this case embodied through caste) as the basis of political claims to protection, rights and entitlements from the state. Yet the Delhi High Court refused this claim. Summarily refusing to halt eviction, the Court argued, rather curiously, that the members of the ASUS had "no right to remain in transit accommodation" despite the fact that these households had been "in transit" for twenty years. A Court appointed commissioner examined the resettlement options offered to the households and argued that the "flats in question are commensurate with the status of persons sought to be shifted." In reply to the ASUS' claim that they had been assured of flats of a certain size and that the new flats amounted to "hostile discrimination" against them, the Court replied that the concept of discrimination under Article 14 of the Indian Constitution "cannot be stretched so far."

The Court reasoned thus: "We are not convinced that by offering flats in question to the members of the petitioner society, any discrimination is meted out to them. We cannot turn a blind eye on the fact that the members of the petitioner society are, after all, encroachers who created slums by encroaching upon public land in the first place. We, therefore agree with the local commissioner, that the flats in question are commensurate with the status of the persons sought to be shifted." Their shifting, the Court said, cannot be delayed because the site was "urgently needed" to build a new

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[154] Schedule Caste is the official term used by public agencies to refer to a set of lower caste groups identified in a schedule of the Constitution that entitles them to protections and privileges from the state. Members of these castes take the name "*dalit*," a word meaning the "oppressed," to refer to themselves following its reported first use by *dalit* leader and activist Jyotirao Phule in the 19th Century. *Dalits* account for between 15-20% of the Indian population.

station for the expanding Delhi Metro as well as a new Civic Centre that was to be the new headquarters of the Municipal Corporation of Delhi. In all its orders leading up to its final judgment, the judges never once referred to, or acknowledged as relevant, the caste of its petitioners.

Evictions are not new to either cities or to Delhi. Yet Nangla is one of a series of evictions that have scarred contemporary Delhi that are different not just in degree but in kind from previous evictions. These evictions were not ordered by planning agencies, the municipality, development authorities or either of the State and Central level governments that govern the national capital. They were ordered by verdicts in the Delhi High Court and the Supreme Court of India, each in a unique legal innovation ironically intended to democratize access to justice in a country marked by entrenched inequalities: the Public Interest Litigation (PIL). Thus far in this dissertation, I have shown how the Courts justified evictions in the name of public interest in part by reframing the latter as the failure of "planned development." Within PIL case law on evictions, this failure was most visibly marked by the distance between the city and its Master Plan – what the Courts termed as "encroachment." Evictions, rather than being acts of exclusion and violence, corrected encroachment. They became acts of a return to order, to planning and to 'good governance.' In this Chapter, I return to the case law on evictions with a different inquiry— to ask what evictions tell us about the politics of urban poverty in Indian cities by looking at the poor themselves.

Upendra Baxi has argued that, "people are not naturally poor, but are made poor." Baxi argues that "poverty" and the "poor" are passive words that invisibilise the processes by which poverty is produced and reproduced. He argues instead for a perspective based on "impoverishment" – "a dynamic process of public decision-making in which it is considered just, right and fair that some people may become or stay impoverished" (Baxi 1988). Drawing on Baxi's notion of "impoverishment," I argue that judgments like *Ambedkar* are part of a wider body of case law on urban evictions that are a lens through which to understand processes of impoverishment in contemporary Indian cities. In this chapter, I analyze this case law to show that evictions make visible at least three processes of impoverishment: (a) new languages of rights and city-centric claims to belonging and citizenship by the elite; (b) the production of the poor as "improper citizens"[155] through the creation of the category of the "encroacher" that binds their identity to a spatial illegality and becomes the basis of a disavowal of rights; and, finally, (c) the discursive erasure of the vulnerability of the poor and the emergence of a new "urban majority" as the subject of urban politics. It is this impoverishment that both enables evictions in the name of public interest just as it is reproduced through them. Further, I suggest that these "active processes" (Fernandes, 2004) constitute an impoverishment not just of the poor, but of the political imaginary of poverty itself within contemporary Indian cities – what I am calling the *impoverishment of poverty*.

To address these questions, I draw upon a body of case law. Taking as my main archive twenty four PILs that have resulted in evictions in Delhi between 1990-2007 in either the Delhi High Court or the Supreme Court of India, I focus not just on the verdicts in

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[155] This term draws and plays upon Chatterjee (2004)'s notion of "proper citizens."

these judgments but the *dicta*, i.e. the detailed texts of the Judges' orders in which they locate their decisions within and as the public interest. I looks not just as the judgments and orders of eviction issued the Judges but also at the original petitions that initiated the PIL, affidavits filed by petitioners, intervenors and other impacted parties, reports by court-appointed expert committees as well as attempts to appeal or stay the orders of the Court by communities threatened with eviction.

The Chapter itself is divided into three parts. The first locates the analysis of this chapter within broader theoretical debates on possibilities and conceptions of citizenship, rights and justice, particularly within the city. The second then turns to the case law on evictions and analyses the petitions, judgments, orders and texts of PILs that have led to evictions in Delhi since 1990 in order to outline the three key processes of impoverishment described above. Finally, the third part juxtaposes the arguments of the Judges with broader political, economic and aesthetic shifts in the city, arguing that the processes of impoverishment that evictions make visible both originate and extend beyond the courtroom.

Citizenship and/in the Contemporary Indian City

On Citizenship

Citizenship, Etienne Balibar has argued, is a concept "as old as politics itself." It has always been marked by two distinctions: "it is bound to the existence of a state and therefore to a principle of public sovereignty, and to the acknowledged exercise of an individual capacity to participate in political decisions" (Balibar 1988: 723). Indeed, since the 18th century, argue James Holston and Arjun Appadurai, two linked concepts have been "the defining marks of modernity" in the establishment of "the meaning of full membership in society" – citizenship and nationality (1996: 187). The nation-state – with its attendant promises of freedom, equality and sovereignty – is the particular form of the modern state that has been the dominant site of the instantiation of citizenship, where "the universal ideals of modern citizenship were expected to be realized" (Chatterjee, 2004: 30).

Within the democratic nation-state, in particular, the identity of the citizen is meant to supersede all others. It is this move "from particularity to universality" that is seen as a "critical aspect of democratization." It is also what allows citizenship to bear the possibility of a politics of equality and justice. The three elements of "citizenship, rights and justice," argues Menon, are intertwined in the context of a modern democracy. The citizen – unmarked by other identities in a form Menon describes as the "abstract" or "unmarked" citizen – carries the potential of justice through the "winning, granting and protecting" of rights, precisely because such unmarking allows the individual to be part of a modern public sphere solely as a rights-bearing citizen (Menon 1998: PE3-PE4). This is why, Balibar argues, the dimension of equality – with "all the problems of definition it poses and the mystifications it may conceal" – is always present in the constitution of a concept of citizenship (Balibar 1988: 723).

In his now classic essay on the history of citizenship in Britain from the 18th to the 20th century, T. H. Marshall usefully broadened the idea of citizenship to three constituent

sets of rights: civil, political and social (Marshall 1977 [1964]). He argued that liberal citizenship expanded from the one to the other as democratization deepened. James Holston has argued against this linear progression of rights, claiming instead that the relationship of citizenship and democratization is necessarily disjunctive. "All democracies – emerging and established," he argues, "are normally disjunctive in their realization of citizenship – they expand and erode, progress and regress in complex ways" (Holston 2008: 14, 317).

Particularly in recently post-colonial societies, part of this disjunction is created because citizenship, nationality and modernity cannot be understood outside the colonial encounter. Marshall's sequence, argues Partha Chatterjee, doesn't translate into post-colonial societies because the career of the modern state in these contexts was "foreshortened." For Chatterjee, ideas of "republican citizenship" that often accompanied the "politics of national liberation" were overtaken "by the developmental state." "The developmental ideology," he argues, "was a constituent part of the self-definition of the post-colonial state." The state's claim to legitimate rule was based not just on electoral representation but on "directing a program of economic development on behalf of the nation." It was in framing "the administration of development" as the "universal goals of the nation" that post-colonial development broke with colonialism. These two foundations of post-colonial legitimacy – democracy and development – as well as their often conflicting demands are then the context for the determination of citizenship (Chatterjee 1997: 277).

Within this project of development, Chatterjee then draws his now well-known distinction between "civil society" and "political society." "Most Indian 'citizens,' he argues, "are only tenuously, and even them ambiguously and contextually, rights-bearing citizens in the sense imagined by the constitution." They are 'populations' to be governed, objects of welfare – subjects, not citizens. They exist, for Chatterjee, as 'political society.' Unlike citizenship, he argues, which "carries the moral connotation of sharing in the sovereignty of the state" and "of claiming rights in relation to the state," members of political society "do not bear any inherent moral claim" (2004: 136). Chatterjee raises for us a set of analytical questions worth posing directly: what is the relationship between the discourses and practices of the [national] development project and citizenship? Particularly, how do shifts in the model of development thus impact changes in the status, practice and exercise of citizenship? Deshpande has argued, for instance, that in the contemporary economic moment in India, post-Independence socialist planning that was "enshrined as the very essence of the emergent nation" has now given way to a regime of globalization and liberalization that seeks to "evacuate the economy from the collective conception of the Indian nation" (Deshpande 1993). What then are the multiple relationships between development, democratic politics and citizenship in contemporary Indian political economy? How form do these relationships take within the urban?

Feminist critiques of the 'unmarked citizen' as a bourgeoisie, male, and, particularly in the Indian context, upper-caste subject are now well established.[156] These critiques have

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[156] See, among others, Pateman 1988, Okin 1989, Young 1990, Benhabib 1995, Sunder Rajan 2003, Menon 2004

often been the basis of what is seen as within feminist politics as the sameness-versus-difference debate— an argument that treating those that are different equally does not further but rather hinders justice. These critiques have been particularly salient within feminist and post-colonial studies in India – provoking a series of debates on citizenship and its imbrications with community-based identities such as caste, religion and gender; in spaces and sites such as family and marriage; and in constructions of the public and private. Importantly, theorists like Nivedita Menon have argued that these exclusions from and within the 'unmarked citizen' are "based on the same logic of exclusions that characterize the coming to being of the nation." She argues that, in thinking of citizenship in India, one cannot be "unreflexive of the founding moment of discursive violence which both presupposed and produced 'the nation'" as well as "the repressions and marginalisations on which hegemonic nationalist discourse was predicated" (Menon 1998: p. PE8).

There is little argument then that citizenship as "a means of organizing society" has, as James Holston argues, been "both subversive and reactionary, inclusionary and exclusionary, a project of equalization and one of maintaining inequality" (Holston 2008: 21). Holston describes this disjuncture partly as the difference between *formal* and *substantive* citizenship, separating the fact of formal and legal equality within the nation-state from the people's actual access to and exercise of different rights, resources and duties. Several questions relevant for our analysis emerge from this distinction: What explains, produces and reproduces the multiple disjunctions between formal and substantive citizenship? What determines or constitutes the substance of citizenship? What are, in other words, the ways in which formal citizens imagined and entitled as equals are denied the real exercise of equality? What implications does this denial have for democratic politics?

Contemporary scholarship on citizenship has the concept in many ways. While several definitions have expanded and reclaimed the concept from its depoliticized reduction to a legal status, others have argued for it as a site of radical democratic politics. Holston and Appadurai give us a useful working definition that typifies the former. They understand citizenship not "just as a legal status" but as that which "concerns the moral and performative dimensions of membership which define the meanings and practices of belonging in society" (Holston and Appadurai 1999: 4-5). They also argue for an emergent site of new debates on citizenship: the city.

On Urban Citizenship

Contemporary scholarship on citizenship increasingly contests the very notion of the "nation-state" as the appropriate scale or site of citizenship. A diverse range of critiques across disciplines argue that the nation can no longer be understood in the same way in a global age, making a case for denationalized understandings of citizenship and belonging;[157] unpacking the easy equation of nationhood and territorial sovereignty;[158] looking at emerging institutions and sites of global governance ranging from international

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[157] Ong 1999, Sassen 2006, Appadurai 2002, Ferguson 2006
[158] Ong 2000

institutions, corporations to discourses of universal rights; citing the rise of new transnational and non-governmental politics as more powerful sites of rights-claims;[159] and engaging with the emergence of inter-connected global cities that inter-reference each other through the "casing" of the nation-state and are perhaps the relevant "political community" within which to gauge and assess citizenship.[160]

Of interest to our analysis is a particular scalar shift in thinking about citizenship: from the nation to the city. Arguing that, "formal membership in the nation-state is increasingly neither a necessary nor a sufficient condition for substantive citizenship," Holston suggests instead that it is cities that are "especially privileged sites for considering the current renegotiations of citizenship" (Holston 1999: 168). For Sasskia Sassen, cities are "foremost in a new geography" formed because "the national as a container for social process and power [has] cracked" just as there has been a "re-articulation of the political-economic system" at the scale of the city. The question that arises, she says, is "how and whether we shall see the formation of new types of politics that localize in cities." She theorizes the possibilities of these new politics through what she calls the production of "presence," claims to the rights to the city by those without power. Cities are "key sites for this type of political work," she argues, and indeed are "partly constituted through these dynamics themselves" (Sassen 2003: 58).

Claims to the right to the city have become powerful discourses both in theory as well as the practices of social movements worldwide. In the *Urban Revolution*, French theorist Henri Lefebvre argued for the emergence of the city as the primary scale and circuit of the accumulation of capital. Indeed, urban neo-Marxist theory in the 1970s and 80s recast questions of the production and reproduction of the relations of production within the urban – from Castells' notion of the urban as a spatial unit of the reproduction of capital marked by "collective consumption," to David Harvey's argument that "accumulation by dispossession" lies at the core of urbanization under capitalism (Harvey 1973; Castells 1977 [1972]; Castells 1983; Harvey 2003; Harvey 2008). For Castells, claims to the city and its politics were motivated by the claims to a greater share of collective consumption. For Harvey, the questions of citizenship and belonging in the city had to be understood as a the struggle over the "democratization of the Right to the City" as a "working slogan and political ideal" precisely in its focus on "the question of who commands the necessary connection between urbanization and surplus production and use" (Harvey 2008). Lefebvre's notion of the right to the city was not just a call for democratized economic control. It was a broader call to the right to the city as an *oeuvre*, to the production of the city as social as well as economic space through participation in the production of meaning. In this sense, Lefebvre's call is closer to Holston and Appadurai's definition of citizenship cited above.

In recent and influential work, James Holston (2008; 2009 among others) suggests that it has not been, as Lefebvre expected, the working classes of the cities of the North Atlantic that brought about the right to the city. The "foundations of this right," argue

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[159] See Keck and Sikkink 1999, Appadurai 2002
[160] See Held 1999, Sassen 2006, Isin 2000, Holston 2008, Holston and Appadurai 1999, Zhang 2001

Holston, "moved south, so to speak" (2009: 247). For Holston, it is within the contemporary moment of extraordinary urbanism in cities of the South that the right to the city finds some realization. Holston and Appadurai argue that, "in many postcolonial societies, a new generation has arisen to create urban cultures severed from the colonial memories and nationalist fictions on which independence and subsequent rule were founded" (1999: 3). Appadurai, in writing about movements of the urban poor in Mumbai, has argued that these movements represent a "deep democracy," a new horizon of urban politics that constitutes "governmentality from below" and represents efforts to "reconstitute citizenship in cities" (Appadurai, 2002: 24). Holston, writing about citizenship claims to and through rights to the city in the peripheries of Sao Paulo, sees the city through the possibility of insurgence: "of a counter-politics that destabilizes the dominant regime of citizenship, renders it vulnerable, and defamiliarizes the coherence with which it usually presents itself to us" (Holston, 2009). He gives us a compelling definition of what he calls an *urban citizenship*:

> "… where urban residence is the basis for mobilization, rights claims addressing the urban experience compose their agenda, the city is the primary community of reference for these developments, and residents legitimate this agenda of rights and participatory practices on the basis of their contributions to the city itself" (Holston, 2008: 23).

It is important to remember here that Holston does not argue for what he calls "insurgent citizenship" as a necessarily 'progressive' or 'egalitarian' space. He reminds us that citizenship is always simultaneously a mechanism for distributing and generating inequalities in as much as it is rooted, especially in the peripheries of Sao Paulo that he studies, in claims for equality, dignity and justice within democratic spheres. It is from Holston then that we get an additional analytical inquiry for this chapter: what does our analysis of millennial evictions tell us about the nature and possibilities of urban citizenship in the Indian city?

The City in Indian Politics

The city has long had an unsettled and ambivalent place in Indian post-colonial, nationalist imagination. Gandhi's imagined *swaraj*, or self-reliance, was a *gram swaraj* – it centered around a self-sufficient village, or *gram*. Even Nehru, India's most famed modernist, argued famously that "India lived in its villages" and the intent of development was not to bring the villager to the city, but to urbanise the village. The period of nationalism, argues Chatterjee, "produced little fundamental thinking about the desired Indian city of the future" (Chatterjee 2004: 140). Indian history has been marked, as Ashish Nandy memorably once argued, by "an ambiguous journey to the city" (Nandy, 2001).

This ambivalence is partly structural: India does indeed, in large part, live in its villages. It remains one of the least urbanized regions on the planet. Only 35% of India is urban, and by any estimates, this figure is not expected to rise beyond 50-60% even by 2030. Importantly, this implies that only one in five members of the upper house of parliament

are elected from urban constituencies. The first National Report on Urbanization came only in 1988; the Ministry of Urban Development was established only in 1994.[161] Unlike in rural areas, decentralization under the 74th Amendment[162] has been, by all accounts, deeply ineffective, implying that Indian cities have a weakly functional "third-tier" of governance, i.e. empowered urban local bodies. In the current Five Year Plan, expenditures on rural development are no less than exactly a hundred times higher than those on urban development. India's largest contemporary expansions of social protection – the National Rural Employment Guarantee Programme, the National Rural Health Mission, and the National Rural Electrification Mission – are, as they indicate, dominantly rural. There are no urban equivalents to these policies. There is arguably, in fact, no articulated social safety net in urban India.

Yet, in 2005, the Jawaharlal Nehru Urban Renewal Mission (JNNURM) was launched – a $2bn urban policy intervention that is a flagship program of the Government of India and without doubt India's largest urban intervention in its independent history. The JNNURM has a particularly and clearly stated urban vision. It seeks to build "world-class cities" through a clear mission statement well worth quoting in its entirety: "The aim is to encourage reforms and fast track planned development of identified cities. Focus is to be on efficiency in urban infrastructure and service delivery mechanisms, community participation, and accountability of urban local bodies and parastatal agencies towards citizens."[163] At a recent speech celebrating the fourth anniversary of JNNURM, the Prime Minister Manmohan Singh reminded the audience that "We must plan big, think big and have a new vision for the future of urban India." It is in the post-91 moment of India's global emergence and economic transformation then that the urban has explicitly emerged – discursively, economically, aesthetically, and within policy. The "urban turn" has indeed begun (Prakash 2002).

What does the emergence of the city as a site of politics at a moment of political and economic change imply for urban citizenship, and particularly, the citizenship of the poor? How is citizenship constructed, understood, experienced and instantiated in the contemporary moment? What are the politics it generates – is it a site of deep democracy or insurgence? If so, by whom and to what ends? In what way is the city constitutive of this citizenship and how is it produced in turn? Finally, but critically, how does the emergence of the city as a site of urban politics relate to a broader narrative of national political and economic transformation? It is to these questions that I now turn.

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[161] The previous incarnation was the Ministry of Works and Housing.
[162] The 74th Constitutional Amendment mandates the transfer of responsibilities and from state governments to municipalities to enable and enhance municipal governance. For an excellent review of the working of the amendment by one of its key authors, see Sivaramakrishnan 2000.
[163] See jnnurm.nic.in. Accessed 19th April, 2012.

Making and Unmaking Citizens

Of Citizens and their Rights

Rights, argues Nivedita Menon, "come into being within specific sets of shared norms of justice and equality" (Menon, 2004: 26). Writing about attempts by women's movements in India to instantiate rights through the law, she argues that, in contradiction to this contextual specificity of rights, appeals to the law are usually made on "the assumption that rights are self-evident, universally comprehended and universally applicable." It is this tension, in part, that makes the "language of rights no longer unproblematically available to an emancipatory politics" (2004: 2). In this section, I describe what Menon calls "diverse discourses of rights" as they emerge in the case law on eviction, arguing that they signal the emergence of a new "set of shared norms of justice and equality" that I will return to in more detail later in this chapter. Three aspects of right-claims within case law on evictions are striking: (a) a conscious and particular use of the word "citizen" as a primary identity and descriptor by both petitioners and Judges; (b) the articulation of this citizenship within the city, rather than the nation; and (c) a shift in these claims towards articulations of the right to a certain quality of life, or as some authors have termed it, a "lifestyle," [164] as opposed to basic needs in the determination of the meaning and bounds of the constitutionally guaranteed Right to Life.[165]

Petitions filed by resident as well as business and trade associations represent the majority of petitioners in PILs that have led to evictions. These petitioners describe themselves repeatedly as "citizens." This citizenship is articulated, however, not as a national but a local, city-centric identity. In multiple petitions, such petitioners describe themselves as "citizens of Delhi." They emphasize residence. They use terms like "locality" or "colony" that are colloquially used in Indian cities to indicate what I have described earlier in this dissertation as legitimate housing – neighborhoods that, whether, legal or not, enjoy a certain *de facto* security of tenure.[166] The word "citizen" in many petitions is used interchangeably with "resident." Petitioners describe themselves as, for example, in *K. K. Manchanda vs Union of India* (hereafter, *Manchanda*),[167] "as an association of residents of a posh colony in Delhi," or, in *Pitampura Sudhar Samiti vs. Government of the National Capital Territory of Delhi*[168] *(*hereafter, *Pitampura)* as the "residents of a locality." In the petition filed by the *Delhi Builders and Promoters Association v Municipal Corporation of Delhi* (hereafter, *Delhi Builders),*[169] even an association of business owners and self-described "trade representatives" emphasize that they "speak for the public" as they are also "residents of the locality" in question.

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[164] See, for example, Fernandes 2004.

[165] For a more detailed history of interpretations of the Right to Life under Public Interest Litigation in India, see Chapter Two.

[166] See Chapter One for a discussion on the use of the word "colony" to indicate legitimate housing.

[167] K K Manchanda v Union of India CWP 531 of 1990. Final orders were given in the petition along with *Pitampura on 27.9.2002.* See supra, fn. 119.

[168] Petition was filed as CWP 4215 of 1995. Judgment was delivered along with multiple other PILs on 27.9.2002. All citations are from final orders of that day.

[169] Delhi Builders and Promoters Association v Municipal Corporation of Delhi CWP 4980 of 2001.

The emphasis on residence, I argue, produces the city as the scale for the determination of citizenship. The city, to paraphrase James Holston, is the primary political community of reference and belonging. "Urban residence" is indeed "the basis for mobilization" (Holston 2008: 21). Within case law on eviction, 'residence' is based on a particular claim: belonging to a legitimate colony. One of the primary markers of legitimacy then is the formal purchase of property. These are "formal" if not necessarily "legal" transactions – documented transactions of sale and purchase of property or built housing whether or not the resultant titles are legally recognized.[170] The idea of the "resident" and the "locality" both underscore therefore not just an urban location, but a claim to a certain regime of legality and property. In *Pitampura*, the petitioners thus argue that they are "a voluntary association of law abiding, peace loving bonafide residents" who have "purchased the plots and constructed their respective houses from their hard earned money." In *Wazirpur Bartan Nirmata Sangh vs Union of India* (hereafter, *Wazirpur*),[171] petitioners describe themselves as "citizens who have paid for the land."

A particular set of rights claims emerge from this location. What is it that "citizens of Delhi" want? The demands of petitioners from resident and trade associations interpret the Right to Life to imply a certain quality of life understood through the environment, infrastructure, leisure and consumption.[172] A new set of rights claims thus emerge: "right to passage and to enjoy good environment of the user of a main arterial road"[173]; "right of citizens for a peaceful and decent living"; multiple claims to "healthy-living and a good environment"; the "statutory duty of the state" to provide "law-abiding citizens with a shopping centre and well-maintained park";[174] "rights of the people of Delhi to clean potable water from the River Yamuna;" and, finally, the right to planned orderliness. It has to be remembered, argued petitioners in the *Delhi Builders* case, that a "residential area means planned orderliness in accordance with the requirements of the residents."

Lawyers and advocates for the urban poor offer a different conception of residence in both scale and content. They use the word "citizen" largely in a national context – the poor are, as they are described repeatedly in petitions filed against evictions, "citizens of India." Their claims to rights and entitlements are based largely on an emphasis on their economic, social and cultural vulnerability, often presented as inextricably intertwined. They are "members of the scheduled caste community"; "landless dalit labourers"[175]; "poor" or "hapless slum dwellers."[176] They are, importantly, portrayed as migrants to the city, despite having lived in the city for decades. In *Dev Chand & Ors vs Union of India*,[177] for example, the petitioners remind the court that residents have lived in the

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[170] See Chapter One for a detailed discussion on my use of the terms formal, legal, and legitimate.
[171] Wazirpur Bartan Nirmata Sangh vs Union of India. Petition was filed as CWP 2112 of 2002. Along with other petitions, judgment was recorded at 108 (2002) DLT 517.
[172] See also Dupont 2011, Baviskar 2003, Ghertner 2011and Fernandes 2004
[173] Delhi Builders, supra fn. 169
[174] Pitampura, supra fn. 119
[175] Ambedkar, supra fn. 152
[176] Dev Chand & Ors vs Union of India CM 6982 of 2007 in Kalyan Sanstha Social Welfare Organisation v Union of India & Ors CWP 4582 of 2003. "CM" indicates that the petition was filed as an interim application within an existing PIL, namely Kalyan Sanstha.
[177] Supra, fn. 176. The CM was filed against orders for eviction of Sanjay Camp passed in Kalyan Sanstha on 14.02.2007.

basti since 1978. Yet a description of the petitioner still emphasizes a tale of rural-urban migration, even twenty five years later:

> Applicant No 1 is 53 years old and came from Bihar in search of employment as a daily wage laborer. His family income is Rs 1800 per month. He has a family of five members who survive on such a meager income. He does not own any land or house and therefore, demolition will definitely render him and his family homeless as he cannot even afford any rented house or room in a city like Delhi.

The city appears ambiguously in petitions arguing for the rights of *basti*[178] residents. Unlike in petitions by residents, the claim to the city is tenuous. Where it is strongest is in claims of economic contribution. Several petitions do emphasize the poor's economic contribution, and often specifically within the city. In *Dev Chand*, the petition cited above, the narrative of vulnerability is buttressed by a claim that *basti* residents are "an essential element in the city's overall life" that "supply a major work force" and "make a significant contribution to the economic life of the city." Yet these are rarely either the primary identification of the poor within petitions or the basis of right-claims. The primary basis of the right-claims remains the recognition of vulnerability and need within the broader context of formal national citizenship. Here, the Right to Life is articulated in terms of basic needs and particularly of the imperatives of shelter and housing. As demonstrated in *Ambedkar* at the start of this chapter, these claims are premised on a right to protection that is demanded not from the city but from the nation-state which remains the primary political community in question.

It is from these differentiated subject positions and through divergent sets of rights claims that the city and questions of citizenship appear within the Court. How do the Courts respond to these claims? Who are understood to be "citizens" by the Court and on what basis? How are those not considered 'citizens' excluded from claims to belonging and citizenship? It is to these questions that I now turn.

Illegality as Personhood: From Encroachment to Encroacher

I argued in Chapter two that 'Encroachment'— the 'illegal' and 'unauthorised' occupation of land, unauthorized construction in individual building units, and the violation of permitted land use, especially within residential colonies— is, for the Courts, the most visible symptom of the failure of planned development. It is what separates the complexities of the real city from the imagination of the planned city – it is the multiple disjunctures between the city and its plan. The Courts perform a particular reading of these disjunctures— one that marks them as scars, gaps to be filled, violations that must be undone. Within case law on eviction, the Courts refer

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[178] The Hindi/Urdu word *basti* (related to *basna*, to settle) means settlement. Colloquially, it is the word most commonly used by residents of urban poor settlements to describe their homes and hence it is the word used throughout this dissertation. Colloquially, *bastis* are understood to represent settlements typically marked by some measure of physical, economic and social vulnerability. It is these settlements that are often called "slums." Within planning paradigms in Delhi, however, a "slum" refers specifically to a settlement designated as such under the 1956 Slum Areas Act. I use the word 'slum' only to either refer to this specific planning category or to report its use in English when necessary. In relation to planning, *bastis* cover three types of settlements: Slum Designated Areas, Resettlement Colonies and JJ Clusters. See Chapter One for a detailed discussion of these categories.

repeatedly not just to encroachment, however, but also to "the encroacher" – an actor responsible for producing the encroachment through squatting and occupying public land. In this section, I argue that the "encroacher" is more than just the actor responsible for the encroachment. She is instead the personification of the very sense of violation and illegality that encroachment represents for the Court. It is this personification that then acts as the basis for the legitimate disavowal of her rights.

The encroacher is the constitutive antithesis of the citizen— each is defined in a productive contradistinction to the other. The encroacher and the citizen produce each other as Judges distinguish, as they did for example in *Maloy Krishna Dhar vs. Government of National Capital Territory of Delhi* [hereafter, *Maloy Dhar*],[179] between "unscrupulous elements in society" and "honest citizens who have to pay for a land or a flat," or argue, as they did in *Satbeer Singh Rathi vs Municipal Corporation of Delhi [*hereafter, *Satbeer Singh],*[180] that they "cannot forget" that the petitioners are, after all, "encroachers on public land." The term "encroacher," Ramanathan reminds us, is "loaded with illegality" (Ramanathan 2004). Yet I take Ramanathan's argument further: the use of the term "encroacher" reduces the personhood and identity of the poor to a singular, particular form of spatial illegality. A single *act* of occupation, in other words, is translated into the *identity* of the *basti* resident, foreclosing any other claims of identification and ensuring the Courts "cannot forget" that *basti* residents are encroachers. As an identity, "encroacher" performs exactly the same function as "citizen" – it supersedes other claims and sites of belonging. It becomes the primary and often the only identity of the poor.

The case that began this chapter – *Ambedkar* – illustrates this point in the Judges' refusal to acknowledge either the poverty or the caste of the residents of Kali Masjid. In *Kalyan Sanstha,* the judges, in the midst of ordering the Delhi government to formulate a policy on "unauthorized trade activities" in *bastis* argue that this policy must keep in view the fact that, "occupants *who are themselves unauthorized* cannot be permitted to raise unauthorized, unplanned, and hazardous structures thereby making Delhi a complete slum" [emphasis mine]. It is in the distinction between acts that are unauthorized and "persons who are themselves unauthorized" that encroachment translates into personhood. The "slum" stands, as Vyjayanthi Rao has argued, as a shorthand for "a distorted urban substance" (Rao 2006)– of all that is not planned, not orderly and, therefore, neither legitimate nor desirable. The use of the identity of the "encroacher" reduces "the poor to the slum" (Benjamin 2008). It is not just the encroachment that is the distorted urban substance, it is the encroacher herself that is no longer legitimate nor desirable. As the personification and embodiment of illegality, the encroacher is unworthy of rights. She cannot posses what Chatterjee calls, "the moral connotation of sharing in the sovereignty of the state" implied within citizenship (2004: 136).

It is thus that the Courts can argue, as they did in the narrative that began this Chapter, that resettlement flats are "commensurate to the status of persons being shifted," or state, as they did in *Pitampura,* that public authorities must act to protect public land that

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[179] Maloy Krishna Dhar v Government of National Capital Territory of Delhi CWP 6160 of 2003
[180] Satbeer Singh Rathi vs Municipal Corporation of Delhi (2004) 114 DLT 760

has "been encroached by slum dwellers who have no right, title or interest in the said land and are merely trespassers." It is thus that, in *Court in its Own Motion v Union of India* [hereafter, *Court in its own motion],[181]* the Court dismissed the very right of the poor to seek justice, refusing an appeal against eviction orders by saying that, "since [slum dwellers] are encroachers of public land and are unauthorized occupants of public spaces, they have no legal right to maintain such a petition." Any possible relief to slum dwellers thus shifts from a question of rights to, at best, one of a discretionary mercy and, at worst, to a miscarriage of justice. In *Satbeer Singh*,[182] the Judges argue that as "encroachers on public land," *basti* residents have "no legal right to stay on that land." It is purely on "purely on humanitarian considerations" and only when "the land owning agency does not require the land of any purpose or use in the near future" that "encroachers/slum dwellers are given various facilities by way of temporary measures till they are removed/shifted." Yet humanitarianism, the Court cautions, must not be confused with "a miscarriage of justice." The Right to Life, the Court argues further, is not violated in the present case. The last line of the judgment is terse: "Temporary inconvenience has to be suffered. Rehabilitation of slum dwellers is a colossal task. Respondents have adopted a benevolent and sympathetic policy. The land is required for public purpose. No malice is alleged. The petitioners must meet the inevitable fate."

It is within the separation of eviction and resettlement, though, that the use of encroachment as the basis of the disavowal of rights becomes most evident. In *Okhla Factory Owners vs. Government of the National Capital Territory of Delhi[183]* [hereafter, *Okhla (2002)*], the Delhi High Court deliberated on the right of those evicted from slums to get resettlement or rehabilitation. They argued: "If a scheme were to be devised for the economically weaker sections of society based on rational criteria, it would achieve a social objective. The basis cannot be encroachment on public land; such a basis, in our considered view, would be arbitrary and illegal on the face of it." One cannot help, they said further, "to use the expression as stated in the Supreme Court judgment[184] which best describes this position as 'giving a reward to a pickpocket.'" A few sentences later, the Court issued orders that made resettlement post-eviction discretionary, and arguably, even illegal: "No alternative sites are to be provided in future for removal of persons who are squatting on public land." The parting words of their judgment yet again invoked what I will argue later in this chapter is an emergent and aspirational urban public in contemporary Indian cities:

> We part with this judgment with the hope and desire that it would help to make Delhi a more livable place and ease the problems of the residents of this town who undoubtedly suffer and are harassed as a consequence of this encroachment on public land.

Using encroachment as a basis to deny resettlement to evicted slum dwellers has critical consequences for the poor. In Chapter One, I showed that it was precisely through

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181 Court in its Own Motion v Union of India CWP 689 of 2004.
182 Supra, fn. 180
183 Okhla Factory Owner's Association v. Government of National Capital Territory of Delhi. CWP 4441 of 1994. Judgment for the case came along with *Wazirpur* (supra, fn. 171) and is recorded at 108 (2002) DLT 517.
184 The Delhi High Court here is referring to Almitra Patel, in which the Supreme Court justice likened giving resettlement to evicted basti residents as "rewarding a pickpocket for stealing." See Almitra Patel v Union of India (2002) 2 SCC 679.

cycles of eviction and resettlement that the poor inhabited and settled urban space. Resettlement was a tacit acknowledgment of the state's failure to provide promised shelter and housing. Yet I also argued that post-facto legalization is the dominant mode of the production of urban space not just for the poor but also for those relatively privileged. The Resettlement Colonies that housed poor households evicted from *bastis* on public land were mirrored, in some ways, by the Regularized Colonies that represented the post-facto legalization of Unauthorized Colonies that were built illegally largely on private or rural land. Illegality has never been the domain just of the "slum." It is within illegalities, in fact, that almost all shelter and housing in Delhi have historically been produced. What evictions evidence, however, is the differential consequences for these different illegalities within the production of the city.

What determines these differential consequences? *Bastis* represented not just an acknowledgment of state failure to provide promised housing, they were also a visual and spatial marker of the vulnerability of the poor who were still, crucially, democratically empowered through their vote. Their illegality was understood within the imperatives of this vulnerability – as last resorts to shelter. This vulnerability was acknowledged even within institutions that were democratically distanced from the ballot like the judiciary. In Chapter Two, I argued that the initial phase of PILs themselves, from the late 1970s through to the early 1990s, evidenced an empathy with the poor, both acknowledging their vulnerability and arguing that *bastis* represented shelter, community and an attempt to make a life out of very little.

It is worth returning briefly to just one landmark PIL from that period. In 1985, the Supreme Court of India issued a landmark judgment that was to hold precedent over cases regarding evictions and resettlement in cities. In *Olga Tellis vs. Bombay Municipal Corporation*,[185] the Supreme Court ruled that, "the right to livelihood is an important facet of the right to life." In effect, the court argued that "the eviction of the [pavement dwellers] will lead to deprivation of their livelihood and consequently to the deprivation of life." It argued that the urban poor do not "claim the right to dwell on pavements or in slums for the purpose of pursuing any activity which is illegal, immoral or contrary to public interest. Many of them pursue occupations which are humble but honorable." Millennial evictions mark, as I have argued throughout this dissertation, a paradigm shift from this period. In this next section, I detail one particular aspect that makes this shift possible: the discursive erasure of the vulnerability of the poor and the emergence of a new language of the "urban majority" that from which the poor are excluded.

Two Tales of Victimhood

The Improper Citizen

In interim orders passed in *Kalyan Sanstha Social Welfare Organisation v Union of India* (hereafter, *Kalyan Sanstha*),[186] the Delhi High Court ordered the eviction of "encroachments" in the vicinity of the Wazirpur Industrial Estate in the western part of

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[185] Olga Tellis vs Bombay Municipal Corporation and Anr. (1986) AIR 180
[186] Kalyan Sanstha Social Welfare Organisation v Union of India & Ors CWP 4582 of 2003

Delhi. The "encroachment" was, in fact, a *basti* named 'Ambedkar Park Colony.' Faced with the notice of eviction in a case that they did not even know was going on within the Courts, residents of the *basti* scrambled. One of the things they tried was to get a temporary injunction on the eviction. Their lawyer filed an application under Section 151 of the Civil Procedure Code, which allows a Court to pass an injunction against its own orders in a proceeding legislation.[187]

The petition argued that *basti* residents were "landless dalit labourers." It described them as "daily wage workers" whose monthly income was "about Rs 1500-2500" and who "on such a meager income" supported a family of five members. "Other members of the community," the petition argued, "include women and children who were totally dependent on the meager income of their husbands." The petitioners "just cannot afford any house or room on rent in a city like Delhi, and have no option but to live" in *bastis*. The petitioners, it was stated, "are living well below the poverty line" and "throwing poor people along with their families along with the old, infirm and young children on the roads without shelter is definitely against the basic tenets of a democracy and therefore permitting the same to happen in a democratic country like India is absolutely unacceptable."

The petition makes a familiar political argument: the poor are vulnerable and dependant. They have meager resources. Their vulnerability is the responsibility of the state. In a "democratic country like India," the vulnerable poor cannot be evicted without mercy. The Delhi High Court refused the petition. In its response, after arguing that the *basti* residents were 'encroachers' without rights, the Court made an additional observation. Citing the report of one of its monitoring committees, it suggested, in fact, that the *basti* was not, in fact, what the petitioners claimed it to be. "JJ Clusters,"[188] they argue, "have undergone sea change inasmuch as three to four storey buildings have come up in place of *jhuggis* and several industrial and commercial establishments are running therefrom [sic]." Our attention, they argue, is "drawn to the Wazirpur Industrial Area" where "there are huge encroachments on Delhi Development Authority land measuring about 17 acres spread in nine pockets where *pucca* residential structures, including 2-3 storey buildings are existing and even factories are being run apart from commercial use." *Pucca* is a colloquial Hindi term that refers to being built of permanent materials like brick, concrete rather than temporary or fragile materials like sheets, bamboo or tarpaulin. The latter are known as *kuccha*, which literally means "raw," or "unmade." The narrative of development, in other words, is the movement from *kuccha* to *pucca* – a movement that literally and metaphorically maps the possibility of moving out of the rawness of poverty into a *pucca,* fully formed life. When the Courts argue that bastis are now dominated by *pucca* housing, therefore, they are arguing that they are no longer *kuccha*, raw, or unmade and, critically, no longer impoverished and vulnerable.

In a last effort to prevent eviction, the residents of the *basti* then are forced to try a peculiar legal strategy: to convince the Court of their poverty. They argue that the

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[187] supra, fn. 176
[188] Jhuggi Jhopdi Clusters, or JJ Clusters, are the technical planning category for the archetypical *basti* characterized by fragile built environments and the poverty of its residents. See Chapter One for a detailed explanation of planning categories in Delhi.

commissioners of the Court are mistaken – "these *jhuggis* and slum clusters consist of *kuccha*, one storied, temporary mud-mortar structures only. Some people have build such roofs on their jhuggies where they can put temporary beds to sleep on at night to beat the summer heat or build a temporary shelter for temporary storage. It is submitted here that the 8th Monitoring Committee Report with regard to the Wazirpur Industrial Area wrongly submitted that *pucca* residential structures including 2-3 storied buildings were in existence." The Court remained unconvinced and the evictions proceeded.

There are two critical moves here: the reduction of the poor to the *basti* and then the simultaneous erasure of the *basti* as a marker of vulnerability and deprivation. The distinction between *pucca* and *kuccha* is a metaphorical measure of the vulnerability of the poor themselves. The *pucca* construction of a house that, in any other context, would translate into desirable indication of a marginal but important rise in the economic security of the poor is interpreted instead as a sign of their diminished vulnerability. This interpretation is performed repeatedly by the Courts. In *Hemraj vs the Commissioner of Police and Ors[189]* [henceforth, *Hemraj*], the case that began Chapter Two and led to evictions at Nangla Machi, the Court repeated, in no less than five different interim orders, that "unauthorized occupants" were using the "encroachment not for shelter but for commercial activities." The accusation that residents of bastis use them for commercial gain rather than shelter serves a dual function: it makes them appear *pucca*, i.e. less economically deprived just as it implicitly suggests an ironic but useful possibility – perhaps that the poor don't live in *bastis* at all. Who is running these commercial activities from the *pucca* structures? In many judgments, courts often point out, as they did, for example, in *Okhla*,[190] that older resettlement colonies, some of which face a repeated risk of eviction, are in fact not the homes of original evictees: "an extremely important and relevant data given is that about 50% of the slum dwellers have sold away or transferred the land and no action has been taken against them though plots were allotted only on license basis." The *basti* is thus emptied of the poor. It is seen instead as a site of illegal gain and commercial profit rather than of vulnerability. It is reduced to an image – flattened of the people who live within it, erased from its historical origins and its structural location within the political economy of the production of space in the city.

The Courts make one final move to deny the poor a claim to victimhood. In *Okhla, basti* residents are compared to an originary displacement within which the authentic victim of urbanization is located: the farmer. As the judges ruled that resettlement was to be delinked from eviction, they argued that if farmers had no absolute right to rural land then the question of *basti* residents having rights simply did not arise. Speaking of farmers, they argue that, "that on the one hand persons who are displaced by acquisition of their land for planned development of Delhi are held to have no absolute right for allotment of plot yet on the other hand the same very land is being utilized to give largesse to encroachers who have settled on the land from which farmers were ousted in the name of planned development of Delhi." Once land is acquired from

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[189] Hemraj v Commissioner of Police and Ors. CWP 3419 of 1999.
[190] Supra, fn. 183

farmers, they ask "can such land be utilized for the purposes of providing accommodation to persons who have encroached on public land? Our answer to this question is in the negative."

The Miniscule Taxpayer

Even as the vulnerability of the poor is denied and erased, the resident-citizen suffers. In some cases, quite literally. In the petition filed by Mr K K Manchanda, he described his neighborhood as "one of the posh localities of Delhi" but argued, still, that he and his fellow petitioners belonged to the "Ashok Vihar Residents Sufferers Association."[191] The construction of the victimhood of the resident-citizen is the counter-narrative of the erasure of the vulnerability of the poor. Several different discursive shifts allow these intertwined moves. In *Satbeer Singh*,[192] the Judges represent the resident-citizen as "a miniscule taxpayer" who, in echoes of their argument about the failure of institutions of governance that I detailed in Chapter Two, is "being made to pay for a corrupt and inefficient political apparatus." Indeed, part of this political apparatus is the politics of patronage and vote banks that the Courts argue are the root cause of "slums." These are what the Court describes in *Pitampura*[193] as the "vested interests of certain sections of society" that compound urban problems. The "citizens of Delhi," the Court argues in *Court in its Own Motion*,[194] "are silent spectators to this state of affairs" just as it argues the "residents of this town undoubtedly suffer and are harassed as a consequence of this encroachment on public land."

In the framing of self-proclaimed elite "residents" as the "citizens of Delhi," the Court performs an inversion of the traditional politics of welfare: it stakes an implicit claim to representing a majority – the "public" – when it speaks of the "miniscule taxpayer." The erasure of the vulnerability of the poor is thus completed by a final move: the claim that it is the resident-as-citizens and the miniscule taxpayers (as opposed to *basti* residents) that represent those that suffer and are vulnerable within the city and, are, therefore, entitled to the protection and attention of the Court as it seeks to determine public interest. Even purely within a calculus of needs, therefore, it is the resident-citizen that claims priority. It is thus that the judges argue, in *Pitampura*, that, "residential colonies were developed first. The slums have been created afterwards which is the cause of nuisance and breeding ground of so many ills. The welfare, health, maintenance of law and order, safety and sanitation of these residents cannot be sacrificed. Their right under Article 21 [the Right to Life] is [being] violated in the name of social justice to the slum dwellers."

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[191] Supra, fn. 167
[192] Supra, fn. 180
[193] Supra, fn. 119
[194] Supra, fn. 181

From The Courtroom to the City: Three Juxtapositions

I began this chapter by arguing that evictions mark what Upendra Baxi has called "impoverishment" -- processes of public decision making in which "it is considered just, right, and fair that some people may become or stay impoverished." Within the case law on eviction, I showed how these processes of impoverishment are signified and produced through (a) new languages of rights and city-centric claims to citizenship based on new interpretations of the Right to Life; (b) the production of the poor as "improper citizens" through the creation of the category of the "encroacher" that binds their identity to a spatial illegality and becomes the basis of a disavowal of rights and substantive citizenship; and (c) the simultaneous erasure of the vulnerability of the poor as a further justification of this disavowal just as the resident-citizen emerges as the new "urban majority" and the subject of urban politics.

Yet I argue that processes of impoverishment made visible in instances of eviction both originate and extend beyond them. More than just the impoverishment of specific populations of the poor that reside in *bastis,* they are part of a larger shift in the politics of poverty in urban India and the reduction of the efficacy of poverty as the basis of a political claim to rights, entitlements and, indeed, to citizenship itself. I term this shift the *impoverishment of poverty.* The judiciary is a privileged site for the production and reproduction of such impoverishment. Ravi Sundaram has argued that the impact of the judiciary in Delhi extends far beyond its orders. Court rulings, he argues, are an "ordinary archive of the city" in Delhi – its language, terms, and logics entering into everyday life and critically shaping urban politics (Sundaram 2009).

How then do judicial rulings on evictions relate to other conceptions of citizenship, rights and poverty beyond the Courtroom? In the final part of this chapter, I describe the impoverishment of poverty by juxtaposing the particular processes of impoverishment at work within case law on evictions to three sites beyond the courtroom. I do so in order to trace how discourses and imaginations of poverty move between the courtroom and the city thereby shaping and producing urban politics as well as to suggest what specific processes of impoverishment made visible by evictions can tell us about the broader politics of poverty in the contemporary Indian city. These sites are: (a) new imaginations of the urban economy; (b) emergence of new urban aesthetic regimes of poverty and the city itself; and (c) emergent discourses and institutionalized policy directives on 'citizen participation.'

The New Urban Economy

"India is urbanizing," argues the most recent national urban document, the High Powered Expert Committee Report on Urban Infrastructure [hereafter, HPEC report; (HPEC 2011)]. Members of the committee argue that this urbanization is not simply a shift in demographics. The urban transition "places cities and towns at the centre of India's development trajectory." In the coming decades, the urban sector will play "a critical role in the structural transformation of the Indian economy and in sustaining the high rates of economic growth." Cities, they argue, "will have to become the engines of national development" (2011: xxi). The HPEC report is just one among many of what I am calling urban documents – policy papers, think tank reports and, indeed, the policy
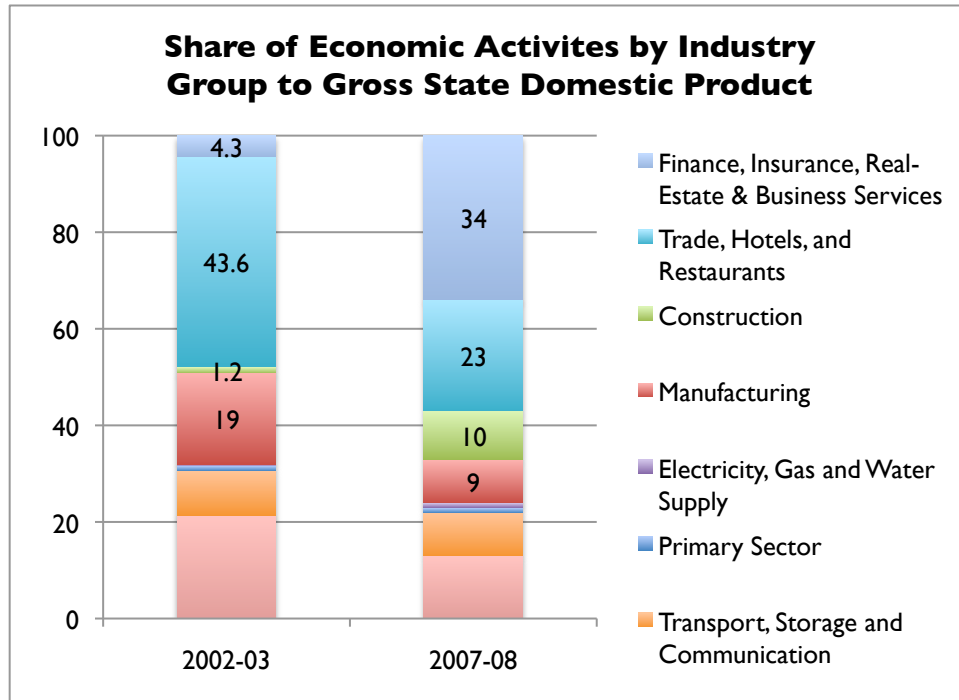
frames of large scale government missions, that are templates of a new developmental ideology for the Indian state. The city, as the HPEC report suggests, is the central site – the "engine" – of this developmental ideology.

The HPEC report cannot be read outside the context of the Jawahar Lal Nehru Urban Renewal Mission (JNNURM). Launched in 2005, the $2bn mission applies to 63 cities across India (Delhi is obviously among them) and is focused on two main components: Urban infrastructure and Governance (UIG) and Basic Services to the Urban Poor (BSUP). The JNNURM marks what Om Mathur calls "one of the most extraordinary shifts that have come about in India in the approach and thinking about cities and urbanization." This shift comes from "the need to realign urban sector policies and programs to the emerging macro-economic context in the post-1991 period" and to reflect the "growing importance of the role of cities and urban centers in the domestic economy" (Mathur 2009: 31).

Like the HPEC report, the JNNURM begins with the understanding that cities could contribute 65% of the country's GDP but that these "urban economic activities" need infrastructure such as power, telecom, roads, water supply and mass transportation as well as civic infrastructure like sanitation and solid waste management. Infrastructure provision has been the prime focus of the first phase of JNNURM funding: airports, mass transit including metros and buses, roadways, and other large infrastructural investments, all channeled through public-private partnerships.[195] The city has emerged on the national agenda, therefore, with a very particular vision of urban transformation in a particular political and economic moment.

One data metric suggests how the urban economy of Delhi is being reconfigured as it becomes central to economic growth. The table below uses data from the Delhi Economic Survey produced by the Government of Delhi using data from the National Sample Survey (Government of Delhi 2009). It compares the structure of "Industry" in Delhi within a short five year period from 2002-03 to 2007-08.

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[195] Delhi has gotten a disproportionate share of allocations under the JNNURM. Its 52 approved projects have a total funding of Rs 7663.9 crores (Rs 766mn), of which a third is a direct contribution from the Centre. Beyond these, however, 24 additional projects related to infrastructure for the Commonwealth Games 2010 were approved through a fast-track process by a Cabinet Committee and cleared by the Competition Commission of India – a one-time only departure from standard JNNURM procedure of allocation. These projects alone are worth Rs 5243 crore (Rs 524mn), nearly doubling Delhi's total JNNURM budget. As Sivaramakrishnan argues: "Delhi because of its political prominence as National Capital and access to power has been able over the past several years to walk away with funds far higher than what equally populous cities elsewhere in the country have been able to do" (Sivaramakrishnan).

Share of Economic Activites by Industry Group to Gross State Domestic Product

Even in five short years, the data is striking. Marked data labels highlight four key sectoral shifts. Manufacturing falls from 19 to 9%. Finance, Insurance, Real-Estate and Business Services rise from 4.3 to 34%. Construction rises from 1.2% to 10%. Trade, Hotels and Restaurants fall from 43 to 26%, within which the significant drop, the report argues, is of wholesale trade. As Delhi becomes an engine of national development, therefore, it is also creating an increasingly dualistic, fractured labor market through a deep economic restructuring.

A second, parallel shift is equally important to note, one that arguably disproportionately impacts the poor. The HPEC report frames the upgradation and provision of public services in Indian cities "as an end unto themselves" but in the same sentence, argues that they this provision is tied up in helping India reach "its economic potential" and will require "reform" in the systems of service delivery. The Delhi Master Plan 2021 [hereafter, MPD '21] outlines a similar vision for Delhi. With a determined use of the past tense, it says that the, "process of planned development [in previous Master Plans] was envisaged as a public sector led process with very little private participation in terms of development of both shelter and infrastructural services" (Delhi Development Authority 2007: 5). The MPD '21 imagined "a critical reform." This reform was centered on, "involving the private sector in the provision of infrastructure services."

Public-Private participation is a key stated objective in the MPD' 21, be it in infrastructure provision in water or electricity or in housing. In the chapter on physical infrastructure, the erstwhile domain of state provided public goods lies transformed. Citing a crisis and severe deficiencies in the provision "particularly of water and power," the Plan "accepts the need for institutional capacity building, User Pays approach and

public-private partnership as tools for institutional strengthening" (Delhi Development Authority 2007: 49) in infrastructural provision. It is not coincidental that power and water were the first infrastructural sectors in which attempts to privatization were made in Delhi – though the former with some success and the latter without any.

The imagined urban economy, restructured as it is through the narrative of national and urban "reform," frames the political community of the city in which urban citizenship is determined. It is within this context therefore that the Judges are evaluating different discursive claims from differently imagined and valued citizens. One exchange particularly marks the Courts recognition of the new mode of development that they are themselves located within. *Basti* residents fighting eviction in *Satbeer Singh*[196] made the following argument in their petition:

> By the 1976 constitutional amendment, the word "socialist" was added to [the Indian] constitution, whereby power was given to the Honorable Courts to strike down a statute which failed to achieve the socialist goal to the fullest extent or which adopts a classification which is not in tune with the establishment of welfare society. Socialism, as per the Supreme Court, has been defined as a principle whose aim is to eliminate inequality of income and status and standards of life and to provide a decent standards of life to working people.

Their eviction, they argued, and the failure of the government to build adequate low income housing represented a violation of the welfare state, of the provision of a decent standard of life. The Judges reply:

> A welfare state is expected to care for its citizens from cradle to grave. This concept has to change. The role of the State, in today's world, has to be one of regulator. The state has to create an environment of growth and equal opportunity. Thereafter it is for each to prosper or perish.

Narratives of political and economic change – of 'reform' in India – have tended to be macro-narratives about the nation. I argue, however, that such aspatial narratives miss the importance of the city as the new "engine of national development" and the production of the city itself. Evictions mark the particularly *urban* nature of the restructuring of the welfare state in India. Within this restructuring, the city is (re)defined as a site of a particular economic productivity reflected in the restructuring of its economy and in policy frameworks with particular targets and conceptions of urban investment and infrastructure. As basic services shift towards privatization, there is a re-assessment of risk and responsibility as the state, in its new role as facilitator and regulator, is no longer the site of claims of welfare by the poor who must "proper or perish" within a newly freed market. Citizens are thus "freed" of the state, able to provide for themselves and optimize their market participation to increase their wealth and their consumption. On the flip side, they must now negotiate access to services and work without state patrimony. This is what Nikolas Rose has called "self-responsibilisation" (Rose 1999: 19).

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[196] Supra, fn. 180

What is crucial is that it is this economic participation – not just through regimes of property, but through the privatization of consumption and increasingly of what Castells called "collective consumption" – that comes to define citizenship. The conditions of citizenship thus stand transformed through what Aihwa Ong has described as the use of "an economic logic in defining, evaluating and protecting certain categories of subjects and not others" (Ong 2006: 6). Within this logic, poverty and vulnerability stand impoverished as the basis of a political claim to rights, resources, and recognition within the city – the elements, in other words, of substantive urban citizenship.

The Aesthetics of Poverty

The State Bank of India [SBI] is India's largest public bank, one of the many nationalized by Indira Gandhi in the 1970s. Its current advertising campaign is seen below in Figure One. It's a campaign that seems appropriate for a bank that introduced rural banking to much of the country and perhaps best exemplified what public banks could be made to do: open branches that were low or even non-remunerative in the name of financial inclusion rather then being dictated by purely financial bottom lines. As much of India's state-run economic structures have been disinvested and privatized, the banking sector, though it has been significantly deregulated and opened up to foreign banks, is arguably a sector where public performance has been the least criticized. India's central bank, the Reserve Bank of India, has been praised, in fact, for its strong regulatory controls – public banks have remained robust and competitive even after the entry of private retail banks.

The SBI campaign shows a typical urban street scene in an Indian city – a street hawker is selling a snack to an office-going professional. Their dress and appearance immediately mark their socio-economic origins: the vendor wears a slightly worn shirt, tucked out of his pants, while the office-goer wears a cleaner, bright striped shirt typical of a white collar desk job. It is, following propriety, tucked in. Above both of them, the caption reads: "SBI Customer." The advertisement claims that as a national, public bank, it is the SBI that is the bank of the rich and the poor. The marketing strategy thus emphasizes access to the bank and plays upon a common perception in urban India that private banks are "fancy," English-speaking and meant for the rich. The tagline was apt: *Banker to every Indian.*

In a series of print and television advertisements in 2006, the State Bank of India [SBI] announced its new debit card. The print advertisement is shown in Figure Two. It shows a once iconic image of Mumbai – the *dhobi ghats*, basins made in stone where clothes are hand-washed, bleached, laundered, dried, and ironed before being distributed back to households. *Dhobis*, or washermen, are common to all Indian cities but the ghats in Mumbai have long represented both a built environment and an iconic urban site associated with the workers of the city that has been immortalized in cinema, literature and photography on the city. In the advertisement, however, the workers' face is hidden. Above his body, a text reads: "Raghu"— he is only given a first name. Underneath his name, it says "Ex-Pickpocket." In a world where customers carry the SBI Debit Card, the poor can no longer do what they usually do: steal. They must,

instead, work and labour. Within the city, they must return to the *dhobi ghats* where they belong. The tagline of the country's largest public bank meant to be the "Banker to every Indian" is *Welcome to a Cashless World.*

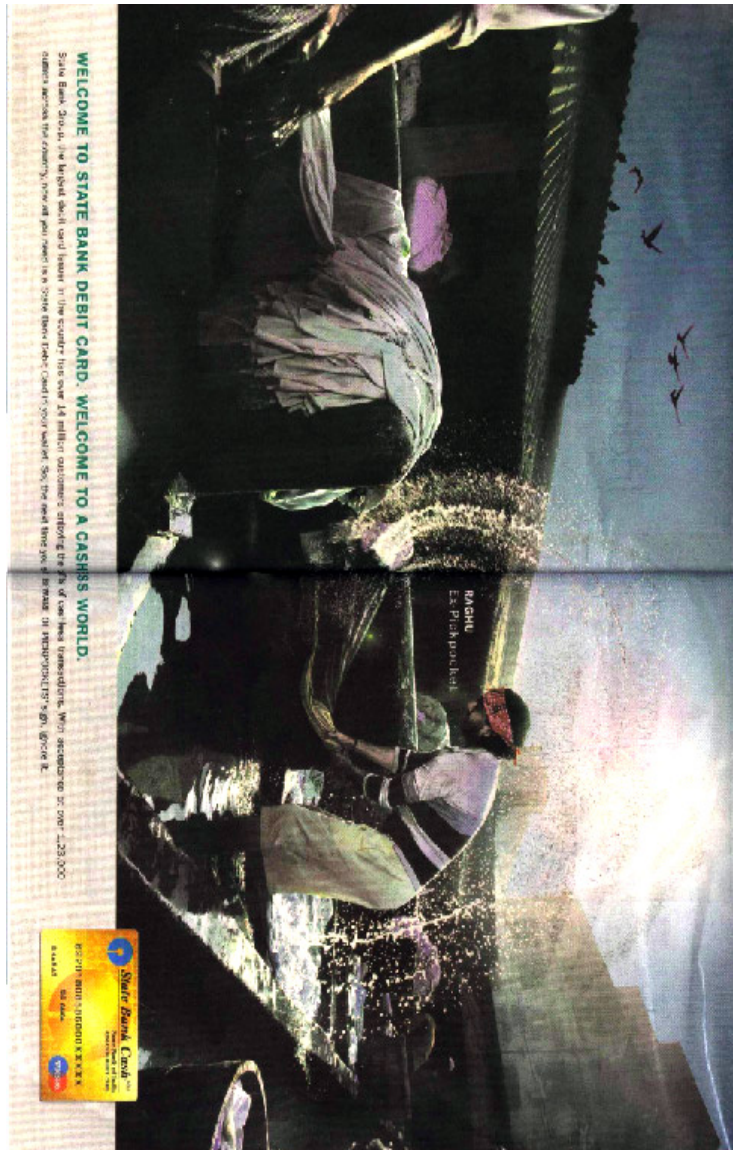**Figure 1: Banker to Every Indian.**

Figure 2: Welcome to a Cashless World

The debit card advertisement was ultimately removed at the order of the Advertising Standards Council of India. Yet the reason for the complaint was not the outrage of many writing about its depictions of the poor but a formal complaint received by the Council that the advertisement would "incite pickpockets" by "conveying that the advantage of being a pickpocket far outweighs the hardships of physical work."[197]

I argued in this chapter that the poor are reduced to "encroachers" just as the *basti* is reduced from being a community that provides shelter and marks vulnerability to an "encroachment." This reduction is, in part, an aestheticisation. Roy (2004) defines aestheticisation as a simplification that changes the relationship between the "viewer and the viewed" to one of "aesthetics rather than politics." The SBI advertisements are part of a visual landscape of Indian cities that Leela Fernandes has called "an urban aesthetic of class purity" within which the poor are invisibilised, at best, and criminalized, at worst. The SBI debit card advertisements create the poor as "improper citizens" rightly excluded from the imagination of the city marked by an upward financial mobility, poised to enter a cashless world. It is ironic but instructive that the advertisement does not even consider the poor as a possible consumer of its product even though the poor arguably are an acknowledged target market for a nationalized, public bank. As the poor are reduced to illegality within the Courtroom, they are similarly reduced to criminality outside it. They are hypervisible and invisible, seen in flattened images emptied of identity, personality, context, structural exclusion, history or location – Raghu, the ex-pickpocket, does not get a last name. Instead, his image is re-coded and, as Ramanathan described it, "loaded with illegality" (2004).

It is not just the poverty that is aestheticised, however, but the city itself. A second image is then pertinent. At the same time as the SBI debit card campaign was issued, evictions at Nangla Manchi were underway. Another advertising campaign started merely weeks after the eviction just as the SBI advertisement was withdrawn. This time, it was the Times of India, the country's largest English language newspaper, that began a campaign in its daily supplement printed only in Delhi called the Delhi Times. The campaign championed the city's "urban transformation," highlighting infrastructural improvements and development projects. Its headline read: "*Challo, Dilli!* From Walled City to World City." Its flagship image (see Figure Three) was painted on the walls of the buildings headquarters in Delhi and carried in its city supplement every week for a period of nearly six months. In this image, the city stood both emptied and recreated. The familiar chaos of the Indian city is replaced by a set of upwardly mobile citizens in a hyper-modernity. The illustrations in the background show skyscrapers, an elevated highway, super-fast trains and cell phones – all flowing smoothly, uninterrupted. The "citizens" lie in postures of leisure – all are dressed in 'modern,' Western clothing. Importantly, three of the four are women: tradition and hyper-modernity will both, it seems, be written on and through the bodies of women.[198] The image creates Delhi as a city of consumption and leisure, a city of an emboldened, modern and global citizen. Extensive daily searches of the newspapers English and Hindi editions for a month

[197] See Chatterjee, Pruvita (2006) SBI Debit Card Withdrawn. *The Hindu*, September 23. Accessed November 10th, 2011. Available at: http://www.thehindubusinessline.in/2006/09/24/stories/2006092403470500.htm.
[198] On women as repositories of tradition in Indian politics and history, see Das 1990, Butalia 2000

before and after the evictions at Nangla Manchi showed that the newspaper did not carry even a single report of the evictions that occurred just as this campaign started.
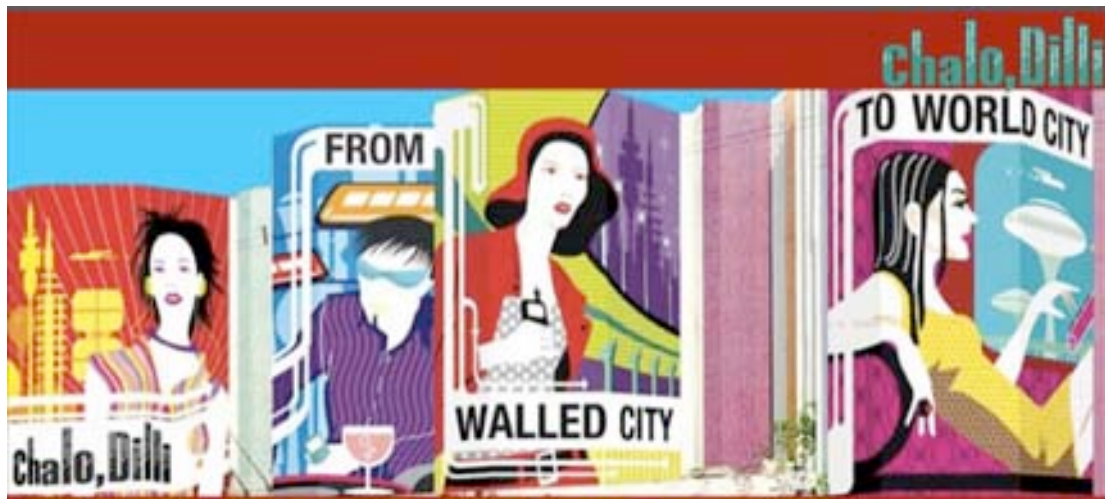
Figure 3: From Walled City to World City

Writing about evictions in Delhi, Asher Ghertner has argued that evictions in Delhi make visible an "aesthetic governmentality" where "the visuality of urban space itself is a way of knowing its essential features and natural standing" within what he calls a "grid of norms" – standardizes aesthetic norms that determine legality as well as status (Ghertner 2011: 281). These norms, he argues, are determined by perceptions of a "world-class aesthetic" in Delhi, one that is both a site of elite attempts to "advance new norms and forms of the urban" as well as their subversion, resistance and evasion by the poor.

The reduction of the poor to slums, therefore, and of the slum to the image of its built environment must be seen alongside the aestheticisation of city space itself, as the city itself is turned into an image, a commodity called the "world-class city." Most recently in Delhi, the Commonwealth Games 2010 made clearly visible the importance of how the image of the city is seen and consumed by a global audience. Amita Baviskar describes the Games as "a grand vision to make Delhi a 'world-class city', words that have been repeated so often that they have become Harry Potter-esque incantations, charms endowed with magical powers. Say 'world-class' and you conjure up a gleaming cityscape of skyscrapers, fast-flowing traffic, and neon-lit branded shops and restaurants, with unlimited power and water. The Games offer an opportunity to fast forward into this future" (Baviskar 2009). Within this imagination, Leela Fernandes has argued that Indian cities are being reconstituted through a "new urban aesthetics of class purity" as an "aggressive middle class" of economically emboldened "citizens" make "aggressive claims to public space and cultural discourse." Spaces of entertainment and leisure, she says, are "the new dams of modern India" (Fernandes 2004).

Citizen Participation

In December, 1998, the then newly elected Chief Minister Sheila Dixit announced a new program of "city-wide changes" that would institute new forms of "citizen-government partnerships." The program was called *Bhagidari*, which in Hindi means 'partnership,' or literally, to "have a stake in something." Dixit is Delhi's most successful Chief Minister, currently serving her third consecutive term and celebrating over a decade of Bhagidari as her administration's most definitive and well-known policy framework. The program has won her national and international recognition and was awarded most recently, for example, with the United Nations Award for innovations in public service. Bhagidari's aim is to address the "simple and common issues that impact on a citizen's everyday life." It draws "from the ideological heritage" of Gandhi and his attempt to "involve the common man in governance" by giving "power to the people." For responsive and participative governance, "citizens must feel that successful and meaningful governance cannot be achieved without their involvement and without their role."[199]

Who does Bhagidari imagine to be "citizens"? The *bhagidars* – or participants – are represented by registered neighborhood associations that are limited to legal and legitimate neighborhoods, or colonies as they are colloquially known. Initial program statements presented this as a "temporary" phase in the program that would gradually expand to "all residents" in the city. Fourteen years after the program's initiation, however, "slum clusters, resettlement colonies and the unauthorised areas [sic]" remain excluded. The "citizen" here is institutionally defined within the bounds of a spatial legality. Access to participation in governance, in other words, is premised on a legal presence within the Master Plan.

This exclusion of a majority of the city's residents from being "citizens" is embodied in the nature of the program's objectives itself. The program imagines specific activities to be shared between resident associations and different urban authorities. It is here that a familiar conception re-enters the discourse: encroachment. In the imagined partnership between the Delhi Police and resident associations, "prevention of encroachment" is listed as one of three main foci. With the Delhi Development Authority, "solutions to prevent encroachment" is listed; with the Department of Industries, the focus is even more explicit: "clearance of encroachments in parks, and on roadsides and pavements within industrial area / estates" stands alongside "removal of Slums / JJ clusters, encroachments on approach roads and pavements." Bhagidari as a whole lists the "prevention of encroachment," in fact, as one of the markers of its success, of what it calls the "changes observed" in the city since its initiation.

The "citizen," the "encroacher" and the idea of "encroachment" thus travel. They are produced and reproduced between the courtroom and the city, simultaneously institutionalized in juridical verdicts in the name of public interest just as they are codified in the city's largest policy paradigm on governance and embedded in the language of everyday life. As the city is produced as a site of politics, a particular

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[199] See delhigovt.nic.in/bhagi.asp. Accesssed 19th April, 2012.

referent – a housing typology of legality and legitimacy – thus stands transformed into a socio-spatial foundation of what James Holston has called a differentiated citizenship, where the "emphasis is on differentiating and not equating kinds of citizens" (Holston 2008) as a result of which inequality stands institutionalized and justified. It is thus within the context of Bhagidari that the Court moves from the "residents of a locality" to the "residents of Delhi" to the "citizens of Delhi," redefining both the imagination of the urban citizen as well as laying claim to the constitution of the "public." Claims to welfare within a national discourse of development in India have longed been based on the idea of the poor represent a majority of Indians–the sheer demography of poverty commanded priority in the allocation of resources. At the very least, accumulation had to be legitimized by its direct and indirect impact on poverty as part of the narrative of national development. As development rearticulates itself within and through the contemporary Indian city, evictions remind us that it now must cater to a new set of elite "citizens" – arguably insurgent but undeniably urban.

The Impoverishment of Poverty

In this chapter, I argued, by looking at evictions, that they made visible processes of impoverishment in Indian cities. I further argued that these processes originated within and outside the courtroom and travelled between them. In doing so, they represented not just an impoverishment of the poor but of the political imaginary of poverty itself as the basis of claims to rights, resources and citizenship. I termed this the impoverishment of poverty. I now define the impoverishment of poverty as being composed of three definitive trends: (a) the displacement of the poor from the developmental ideology and the "imagined economy" (Deshpande, 1993) that marked the welfare state as it has re-articulated at the scale of the city; (b) an altered representation of the poor through an erasure of their vulnerability amidst a broader criminalisation that legitimizes a disavowal of their substantive rights; and (c) the emergence of an elite insurgent urban citizenship that challenges the efficacy of poverty as a political claim within the determination and distribution of rights, needs and entitlements.

The impoverishment of poverty will take different forms across scales and locations. Within the urban, this impoverishment marks the complexity of the Indian city as a site for citizenship as it emerges into political, economic and aesthetic importance. As the developmental ideology of the nation has re-articulated itself through the city, evictions stand as reminders that an emergent and insurgent urban citizenship has indeed reconstituted the city as a site for citizenship but that this re-articulation has been just as much what Holston described as a "legitimation of inequalities" and a site of the foreclosure of the right to the city for the urban poor as it has been a site of "deep democracy" and a new horizon of "governmentality from below" (Appadurai 2002). The impoverishment of poverty stands as a serious challenge to the right to the city for the urban poor. Yet it also represents the starting point for an inclusive politics – it is in only through recognizing the logics and processes of impoverishment within the city that renewed resistance can begin that will not only be impassioned but also effective.

Chapter Four

"You can't just walk into a Court":
Notes on the Juridicalisation of Resistance

The notice came six days before the eviction. It was the end of April, 2006, and the families of Vikaspuri – a JJ Cluster[200] in Delhi that had been settled in 1984 – were faced with the threat of demolition. The West Zone Deputy Director of the Delhi Development Authority (DDA) had come to meet representatives of the *Delhi Shramik Sanghathan* (literally "Delhi Residents Coalition"; hereafter, DSS), a federation of *basti*-based groups that has a presence in over a hundred *bastis* in the city and had worked, at that point, in Vikaspuri for nearly a decade. He met Ramendra, one of the founding members of the DSS. His presence, Ramendra said, "was the result of years of work – at least the government now knew who we were."[201] Ramendra was under little illusion about the DDA officers intentions – "he wants to do this without any trouble." Ramendra recalled the officer being straightforward with him: "You tell me how we should proceed. I need three days to write the report. Let's get together and do this." The "report" was a compliance report to be filed not with the Director's superiors in the DDA or to any member of the Delhi government. The report was due to the Delhi High Court on whose directions the Deputy Director had come personally to evict the JJ Cluster – it had to be filed by May 10th. The date for the demolition was set for May 4th at 10:30am. Ramendra recounted the details: how many buses would come, how people would have time to pack their belongings, how it would all be peaceful. "It was a strange conversation," he remembers, "how calmly we discussed all this."

Neither the residents of Vikaspuri nor the activists involved with the DSS had known that a case involving their JJ Cluster was being heard in the court. Vikaspuri had existed for over two decades. "There was so much government investment in the colony," said Ramendra, "we had gone to the local Magistrate's court ourselves to force the government to put a primary school in the area. We sat with the Delhi Jal Board[202] to get water hydrants. All the toilets in the slum are built by the Slum and JJ Department." For Ramendra and the DSS, the strategy had been to seek legitimacy for the settlement through maximizing public investment by what he called the *sarkar* – a term often translated and used as "the state" but one that refers, as I have argued in this dissertation, specifically to institutions of the executive including elected representatives and counselors, urban authorities like the DDA and the Municipal Corporation of Delhi and public utilities like the Delhi Jal Board. It had seemed to be working. According to Ramendra, the DSS had been in talks with the DDA to 'regularise' (to *post-facto* make

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[200] In this dissertation, I have used the term 'basti' to represent settlements of the urban poor typically marked by some measure of physical, economic and social vulnerability. These are usually colloquially called "slums." I use the Hindu/Urdu word *basti* because that is the word used by residents to describe their settlements and because "slum" has a particular, legal definition within planning in India. The colloquial term *basti* covers within it what are technically called JJ Clusters, Slum Designated Areas as well as Resettlement Colonies.

In this chapter, however, I refer specifically to JJ Clusters within *bastis* for they, unlike Slum Designated Areas and Resettlement Colonies, are entirely illegitimate from the perspective of planning and claims to legal settlement and thus respond to evictions differently. Through most of the chapter, therefore, I thus use the term "JJ Cluster" instead of *basti*. Where I retain the use of *basti*, it is to indicate its use in interviews by others or to speak more broadly about settlements of the poor and not specifically about JJ Clusters. For a detailed discussion on these terms, see Chapter One.

[201] Personal Interview, dated 03.09.2010. Excerpts from interviews are presented in English translated by the author. Key words are referenced in Hindi where necessary.

[202] The Delhi Jal Board is the public, and indeed only, water supplier in the city of Delhi.

legal and legitimate[203]) the JJ Cluster through an *in situ* up-gradation process – "We were almost there. We thought it was just a matter of time."

When the notice came, the DSS scrambled. It approached Prashant Bhushan, a well known senior lawyer of the Supreme Court who had a history of taking on public interest litigations for *basti* residents and who Ramendra happened to know personally from when they were both part of the National Alliance of People's Movements. One team from DSS thus started working on an emergency petition in the Supreme Court looking for a 'stay' – a temporary injunction on the eviction orders pending further deliberations and hearings. Another team went to meet senior officials of the DDA, trying to get them to intervene or at least to get allotment letters for resettlement sites in case the eviction proved unstoppable. The legal petition was filed literally overnight and asked for an urgent hearing on May 4th – the same day that the demolition had been planned. As the petition was being filed, a third team from the DSS pressured authorities as they surveyed residents of Vikaspuri to determine who would be eligible for resettlement sites. The initial DDA survey had identified only 293 households out of 1100 in the JJ Cluster – the DSS pressure increased the number to 700.

On the 4th of May, despite all the agreements with the DDA on the process and schedule of resettlement, the demolition bulldozers came at 7am – three and a half hours early and well before the Court could hear the emergency petition. The team was led by an Additional Commissioner of Police who arrived armed with orders from the Court. The Commissioner was willing to listen to no reason. "Many people were still asleep when they heard the trucks," said Ramendra, "few could save their belongings in time." There was a "back-story" here: the Commissioner was "angry at us," said Ramendra. A few months earlier, the DSS had exposed corruption in the local food distribution centre through a series of public hearings. The Commissioner had been made to publicly apologize for letting the theft of subsidized food grains go unnoticed. "He just wanted to get even," said Ramendra. The director of the DDA with whom the agreements had been negotiated was immediately called to the site. He came but professed helplessness: "the Commissioner has orders from the Court, what can I do now?"

An application under the Right to Information Act[204] later found that 1040 police officers had been put on duty that day – nearly one per household. Ramendra claims that activists of the DSS were held under virtual house arrest though he said that the police later denied this in the media. Vikaspuri was demolished. Eligible evictees were sent to Bawana, nearly 40km away on the north-western periphery of the city, where households from multiple eviction sites in the city had been continuously sent since 2003. Facilities were minimal and conditions abhorrent. Moreover, most families from Vikaspuri had still not been assigned plot numbers. They encamped on the edges of the

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[203] For more on "regularisation" of *bastis* as well as my use of the terms "legal" and "legitimate," see Chapter Two.
[204] In 2005, India passed a comprehensive Right to Information Act that allows any citizen to demand information from a public agency through writing a simple letter and expect a reply within 90 days. The Act has become a powerful tool in the hands of many activists precisely because of its operational simplicity and effective institutionalization – every government department and ministry now has an Information Officer whose role is only to reply to RTI requests.

resettlement colony, living in temporary shelters for nearly a year. This time, the DSS took a different tack. They sat on an indefinite day and night *dharna*, or protest, at the offices of the DDA itself, living on the pavement outside the office and refusing to move. "Nearly 400 people came and camped outside the DDA," remembered Ramendra. Supporters came from all over the city and slept anywhere between one and three nights with DSS members. They demanded that their plot numbers be assigned immediately through an unbiased draw of lots that took place in front of them. On the 20th day, the Director of the DDA emerged, first to threaten and then to negotiate. At the end of that *dharna*, Ramendra said he had a realization: "I thought back to the eviction and it seemed to me that we should have fought like this then – we should have stayed and refused to move. We didn't realize what resettlement would be like."

This dissertation has so far described the logics of Court-ordered evictions in millennial Delhi, asking what the framing of these evictions as public interest tells us about the politics of impoverishment, governance and citizenship in the contemporary Indian city. This final chapter shifts focus from the Court's rulings to the impact that these juridical orders have on resistance within the JJ Cluster. It asks: how did social movements react to and resist evictions? What were the sites and forms of their struggle? What strategies did they employ and what claims to rights, relief or resources were embedded within these strategies? Particularly, it asks: how, if at all, did the fact that these evictions were ordered by the Delhi High Court and the Supreme Court of India rather than the *sarkar* impact resistance?

Put another way, it follows Ramendra's musing: why didn't an activist institution like DSS, well capable of protesting against the DDA as they later did, not fight the court-ordered eviction? How do we understand the different layers, sites and forms of both engagement and resistance that the DSS' reaction to evictions in Vikaspuri makes visible?

Drawing upon a series of interviews conducted with activists who are members of urban social movements resisting evictions in Delhi from the late 1990s, this chapter argues that court-ordered evictions in Delhi make visible what I am calling a *juridicalisation of resistance* – changes in the forms, claims, sites and strategies of urban social movements in advocating for the rights and citizenship of the urban poor. Specifically, the chapter argues that the emergence of the Court as what Colin McFarlane has described as a "space of political engagement" (McFarlane 2004) shapes the choice of strategies used by urban social movements, introduces new actors and decision-making processes into movement spaces, alters the content of right-claims and forecloses certain kinds of claimants just as it shapes the political identity, narratives and history of *bastis* and *basti* residents themselves.

The chapter is organized in four main parts. The first locates the main argument in a set of theoretical debates on rights to and in the city and the role of resistance within attempts to realize these rights. The second then describes and assesses the multiple strategies of resistance used by activists to resist Court-ordered evictions in Delhi over the past decade. The third explores the dynamics of the Court as a site of resistance particularly looking at challenges it poses to conceptions and practices of rights-based approaches. The fourth and final part outlines the juridicalisation of resistance and draws out its implications for thinking about the rights and citizenship of the urban poor.

On Archives and Activism

This chapter draws from three key archives. The first is a set of fourteen interviews conducted in 2010-11 with key figures within a significant site of organizing and resistance against evictions in Delhi— Sajha Manch. Literally 'Our Joint Platform,' Sajha Manch is a coalition of nearly forty non-governmental organizations, voluntary associations, individuals, resident associations, *basti*-based groups and worker organizations including trade unions. It was formed in 1999 with the aim of bringing together interconnected issues that affect the urban poor – livelihood, housing, shelter, and safety. The DSS was an active part of Sajha Manch until about 2005-06, after which they parted ways.

Each of the interviewees self-identifies as a *karyakarta*/activist both as part of the Sajha Manch as well as of their individual organization within the coalition. All the interviews were bilingual and conducted in a mix of Hindi and English, with the degree of each language varying across subjects. About half the interviewees are activists who are relatively privileged and live outside *bastis* though they have been working within them for many years. The other half are activists in the coalition and also *basti* residents themselves. Excerpts from interviews used in the text of the chapter are written in English using my own translations though original Hindi text has been retained as far as possible to indicate particular translation choices as well reflect the body of interviews that were largely conducted in Hindi.

What marks the choice of this set of interviewees is their understanding of themselves as "activists." Each was actively engaged through their membership in Sajha Manch in attempting to respond to multiple evictions throughout the city and not just, for those who lived in *bastis,* in their own settlements. What this archive does not represent is interviews of *basti* residents who fought the evictions of their own homes outside organized platforms or the forms of resistance in everyday life that *basti* residents employ just to survive. This is, therefore, an analysis of (even if often loosely) institutionalized activism rather than a broader narrative of resistance within the *basti.*

The second archive is a set of interviews with lawyers involved in filing legal petitions on behalf of *basti* residents. Lawyers representing *bastis* in five of the petitions studied in this dissertation were interviewed. Two of the lawyers are eminent senior lawyers[205] practicing in the Delhi High Court and the Supreme Court of India, and are widely known as public figures associated with human rights causes. The first, Prashant Bhushan, heads the Campaign for Judicial Accountability while the latter, Colin Gonsalves, heads the Human Rights Law Network. The other three lawyers are both more junior and younger but also have a history of being involved in activism beyond the law. All the lawyers are Delhi-based. It is important to note that the Sajha Manch

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[205] As part of a broader commonwealth tradition, the judiciary in India recognizes and formally designates certain lawyers as "senior". In the Delhi High Court and the Supreme Court of India, becoming a senior lawyer requires an application to High Court and Supreme Court judges who then meet and decide whether or not to confer the designation of Senior Advocate. In Delhi, the nominee has to be 40 years, however, a process of exception exists for younger nominees. The judges vote on the nominee having knowledge in a specialized branch of law. Having a senior lawyer represent a case is seen to strengthen the argument and chances of success measurably.

never filed a legal petition in Court as a coalition though individual member organizations (like the DSS) within it did.

The third archive the chapter draws upon are the numerous single page pamphlets—called *parchas* – released and authored by Sajha Manch that are printed for mass distribution at its various political actions and demonstrations. *Parchas* are a staple of public events organized by social movements across India. Usually printed on brightly coloured recycled paper, they are printed in the thousands and handed out not just to those who attend political rallies but to people walking on the street, officials, and curious onlookers. Their aim is to summarize the key messages of a public event or protest from the perspective of the organizers and to communicate this not to fellow protestors but precisely to what is often referred to as the *junta* or the "public." *Parchas* are then moments when movements present themselves and their political mandate making them an ideal complement to interviews with activists and ethnographic artefacts in their own right.

It is important to note again that this chapter focuses on how, within *bastis,* JJ Clusters in particular respond to and resist the threat of eviction. As I argued in detail in Chapter One, JJ Clusters are illegal, informal, unplanned and illegitimate, implying that they possess little to no legal claim to tenure vis-à-vis land and planning laws. This is not the case for two other forms of settlement also known as *bastis* – Slum Designated Areas (also called "notified slums") and Resettlement Colonies – both of which have some degree of legality and legitimacy when faced with the threat of eviction. The conceptions and practices of resistance in these latter settlement types, therefore, could be considerably different from those within JJ Clusters.

Rights In and To the City

How does one think about the conceptions and practices of rights in an urban context? For many urban social movements, within the academic literature and in policy and practice,[206] the Right to the City is an emergent framework within which to advance an agenda of urban inclusion and social justice. French philosopher Henri Lefebvre wrote about the right to the city in the 1960s when he argued that the urban was becoming the primary mechanism of capital accumulation replacing the industrial mode of production. The city would soon be, he predicted, dominated by exchange value rather than use value. It was in response to this shift in the mode of production and accumulation that Lefebvre wrote about the "the right to *oeuvre* (the city as a work of art), to participation and to appropriation (clearly distinct from the right to property)" as a claim to the city (Lefebvre 2002 [1968]). As David Harvey describes it: "The right to the city is far more than the individual liberty to access urban resources […] It is, moreover, a common rather than an individual right since this transformation inevitably depends upon the exercise of a collective power to reshape the processes of

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[206] In 2005-06, many international NGOs (led by Habitat International and later supported by UNESCO) and movements meeting in the World Social Forums drafted a World Charter on the Right to the City. See here: http://www.globalgovernancewatch.org/resources/world-charter-on-the-right-to-the-city. Accessed February 9th, 2012. In Brazil, the right to the city is the a significant component as well as underlying spirit of the a federal law called the City Statute (see Caldeira and Holston 2005, Fernandes 2007).

urbanization" (Harvey 2008: 23). For Harvey, the right to the city must be adopted "as both working slogan and political ideal precisely because it focuses on the question of who commands the necessary connection between urbanization and surplus production and use" (2008: 40).

Yet how is this "political ideal" to be operationalised and how are urban social movements meant to act upon and towards it? Peter Marcuse argues that for the right to the city to be realized, it is necessary to explore "the question of whose right is involved, who the potential actors, the 'agents of change', are and what moves them either to propose or to oppose basic change" (Marcuse 2009: 189). It is necessary, he says, to ask: "who is likely to lead the fight, who will be most likely to support it, what will their reasons be?" There are few obvious answers. David Harvey has argued that it is difficult to "define who the agents of change will be in the present conjuncture" and adds that it will "vary from one part of the world to another" (Harvey 2009).

In recent and influential work, James Holston (2008; 2009 among others) suggests that it has not been, as Lefebvre expected, the working classes of the cities of the North Atlantic that brought about the right to the city. The "foundations of this right," argue Holston, "moved south, so to speak" (2009: 247). For Holston, it is within the contemporary moment of extraordinary urbanism in cities of the South that the right to the city finds some realization. It is precisely in the "peripheries of these cities," he argues, "that residents organize movements of insurgent citizenship to confront the entrenched regimes of citizen inequality that the urban centers use to segregate them" (2009: 245). In writing about Sao Paulo, Holston argues for an "insurgent citizenship." Urban insurgence of home owners and other actors in the peripheries, he argues, has generated a "national transformation of citizenship" where the "current of change went from the local to the national" and created new conceptions and practices of rights and citizenship, along with new processes of participatory planning and democratic governance" (2008: p 252).

"Not all peripheries, of course," concedes Holston, "are insurgent" (2009: 245). Susan Parnell and Edgar Pieterse, in fact, argue that the "notions of urban citizenship have been little applied to the fundamental development questions of how cities of the South might be imagined or governed"— a lacuna made apparent by "the absence of an articulated rights-based agenda for cities of the South" (Parnell and Pieterse 2010: 148) though they mark Brazil as a strong exception. For them, the challenge of using rights-based approaches amidst an urbanisation of poverty underscores a the need for a different political practice: an engagement with the "state" and the "downscaling" of "the developmental state to the city scale" especially in the "large cities of the South" (2010: 146). Zerah et. al. describe this approach as a more "reformist" take on the right to the city, which they describe as "rights *in* the city." Rights in the city are a bundle of rights that can be obtained "only by engaging with the institutions of the developmental state" (Zerah, Lama-Rewal et al. 2012: 2).

For Parnell and Pieterse, it is socio-economic rights like service provision, housing, livelihoods and shelter that particularly need this engagement. These require "bringing the state back into development debates" in a manner that "tackles the appropriate

scale at which government can act to support rights realization" (2010: 150). Parnell and Pieterse are writing against what they see as the marginalisation of the state as a development actor through the undifferentiated charge of "neoliberalism." For our purposes in this chapter, however, it is also their understanding of the nature of engagement with the state that deserves close attention. They argue that:

> … citizen action that relies exclusively on an oppositional logic or a political stance of perpetual resistance is unlikely to achieve reforms in the mundane functioning of the state, which we have shown from the Cape Town experience to be a precondition for cumulative changes that can transform the political economy of opportunity and provide institutional access to resources (2010: 158).

Colin McFarlane describes this relationship with the developmental state using the idea of "spaces of political engagement" (McFarlane, 2004). Writing about the Mumbai-based Alliance – the network of SPARC, the National Slum Dwellers Federation and Mahila Milan – praised internationally for their role in community-led resettlement, precedent setting as well as in the self-provision of services like toilets and sanitation (see Appadurai 2002; Patel, D'Cruz et al. 2002; Burra, Patel et al. 2003), he argues that these spaces "refer to spaces of struggle and negotiation" between the Alliance and "authorities" which are "not just particular meetings or events" but "on-going attempts to frame relations between the Alliance and authorities" (McFarlane 2004: 894). For some, like Margit Mayer, such engagement may represent some improvements for the marginalized but they lose the right to the city. "Unlike the Lefebvrian notion of the right to the city," she argues, "this institutionalized set of rights boils down to claims for inclusion in the current system as it exists. It does not aim at transforming the existing system" (Mayer 2009: 369). At stake here are questions of the role and form of resistance: can systemic change occur from within through an inclusion that nevertheless challenges structures of power, or must what Mayer calls "transformation" occur almost before-hand in which case inclusion is closer to co-optation than a spark of change?

The tensions between rights to and in the city came to a fore in Indian cities in 2005. In that year, Mumbai witnessed a series of brutal evictions of informal settlements and pavement dwellers that displaced nearly 300,000 people. The Alliance famously and to much public criticism did not mount a campaign of public resistance. It said instead that, "our experiences in the past and the outlook of the poor communities that we work with have propelled us to eschew the path of righteous indignation and protest" (Mitlin and Patel 2005: 3-4). The Alliance, as Sheela Patel recounts, argued that:

> we have learnt from these communities that the only way, at present, that the poor get housing entitlements regardless of international covenants and national policies is to survive the evictions and demolitions until such time that the state concedes and enacts first, protective legislation, and, later, legal entitlements. However irrational this might sound, this is the real insight into the process – the subtext to the on-going war of attrition between the poor and the state (2005: 3-4).

Ananya Roy, however, argues that the work of the Alliance – with its focus on dialogue and negotiation in what Appadurai calls the "politics of patience" – can also be read as a "politics of compensation" that creates a "distinctive political subjectivity" (Appadurai

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2002; Roy 2009). This politics, she argues, is steeped in the "morality of collaboration, participation and mediation. To protest, to confront, is to stand outside the parameters of citizenship" (2009: 173).

This tension, or perhaps more accurately this calculus, between negotiation and confrontation as modes of engagement and the relationship of this calculus to rights to and in the city is at the heart of this chapter. When seen from the perspective of urban social movements within JJ Clusters in Delhi – from, for example, Ramendra's perspective – how do we understand this calculus between negotiation and confrontation? In the context of evictions, we must ask further: what spaces of political engagement can exist in a context of repeated and gross violations? Do evictions, in other words, mark a limit, or frontier, of engagement? Conversely, do they symbolize its failure? What do evictions tell us about the (im)possibilities of insurgence?

The emergence of the Court as the site and object of engagement further complicates the relationship between negotiation and confrontation as strategies of citizenship used by the residents of JJ Clusters to claim some form of legitimacy in the city. The question shifts. The authors above assess the nature and scale of either negotiation or confrontation with the "state" when the latter is understood largely and implicitly to be the institutions of representative governance and urban authorities – what Ramendra called the *sarkar*. Yet can one enter into a "war of attrition" with the judiciary? What does it mean to "negotiate" or "confront" a judiciary? Is such a politics possible? What are its possibilities and its limits? What is, in other words, the nature of the space of political engagement when the "authorities" are not the institutions of representative government but the judiciary? Who then are the "agents of change"? What set of strategies, claims and tactics can be employed? Are right-claims and the demands of the residents of JJ Clusters made within a courtroom similar to those made to the *sarkar*? It is to these questions that I now turn.

Strategies and Narratives of Resistance

Of Multiple Fault Lines

 "I remember," said Kalyani Menon-Sen to me one afternoon as we sat in a café in south Delhi far from either the JJ Clusters of Yamuna Pushta or the resettlement colony of Bawana where we had worked together, "more than anything else the suddenness of it all. Everybody was so stunned. The first day I don't think people even got their breath back."[207] Kalyani was describing the evictions at Yamuna Pushta, the first of a series of large-scale evictions that have scarred Delhi's landscape in the first decade of the millennium. Over 150,000 households were evicted over four months from the banks of the River Yamuna in the northern part of the city – less than 30% received any resettlement (see Ramanathan 2004; Bhan and Menon-Sen 2008; Dupont 2008; Bhan 2009 among others).

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[207] Personal interiew, dated 12.02.2011.

At the time of the evictions, Kalyani was co-ordinator of Jagori, a feminist NGO that is one of the oldest womens' organizations in the city.[208] Jagori, especially through the personal involvement of Kalyani and another colleague named Sreerekha, was an active part of Sajha Manch which itself had a significant presence in Pushta at the time of evictions. "Nothing was very clear. Everybody was doing what they could. The night before the demolitions there was a huge protest at ITO.[209] The cops were there in full force and the *pradhan*[210] came back and said '*baat ho gayi hai, kal toh nahi tootega* (there have been discussions and at least there won't be demolitions tomorrow).' It gave everyone a false sense of security," she recounted.

The *pradhan* was wrong. The demolitions did take place the next day and continued on for weeks as the legal petition filed in the Supreme Court seeking a "stay" – a temporary injunction pending further hearing – failed to move the court. "At that time, quite a few people in Sajha Manch were quite confident that the court plea would work because it seemed like such strong case. I never imagined that cases would be swept out quite so summarily. It was quite a revelation. Ruma Pal's[211] bench was churning out judgment after judgment in those days, and suddenly the eviction just happened." She said further: "I kept thinking 'how could this happen to people who have been there for so long. Also people like Colin[212] and all… they were really very, very sure about the case. This was seen as a landmark case – it would give the BJP a slap in the face.[213] There was this huge confidence. Now I think back and wonder how we could have been so foolish but there was this sense that the Supreme Court was like this benign Uncle – if nothing else, *stay toh de hi dega* (at least we'll get a 'stay')."

There is never a consensus within movements on how to respond to the threat of eviction, argues Kalyani. For her, the fault lines of the division in the case of the Pushta evictions were between what she called "institutional groups" on the one hand and "residents," "workers" and "community groups," on the other. The divisions grew, she said, once the orders for evictions came. Community groups felt that they were the ones who had the most to lose. "People whose homes were being broken pulled out – they said you guys will keep fighting [in court] and prove your constitutional point and all but *humko jo milega woh bhi chhoot jayega* (what we can salvage we will lose that as well)." There are others, she says, who wanted to fight… who said "whatever the order *hum nahi maanenge (*we won't agree)." But still others and particularly the lawyers, she says, couldn't think of how to fight. "There is such a strong segment of legal types within

[208] See www.jagori.org.
[209] The ITO is the colloquial name given to an commercial and institutional area in the northern part of the city that hosts many government offices, including the Delhi Development Authority and many offices of the municipal authority. Protests against the DDA are often said to happen "at ITO."
[210] Pradhan refers to the (usually) elected leader of a basti panchayat, or council. Though unofficial from the perspective of government, the pradhan is usually recognized as a local political leader. Pradhans are, at times though not always, affiliated, loosely or through direct membership/affiliation, with national political parties like the Congress, Bhartiya Janta Party (BJP) or Community Party of India (CPI).
[211] Ruma Pal was then a judge in the Delhi High Court who authored the orders of eviction against Yamuna Pushta.
[212] Colin Gonsalves is a noted Delhi-based lawyer who also heads the Human Rights Law Network (HRLN) and was an active presence within Sajha Manch.
[213] At the time of the first evictions at Yamuna Pushta, the BJP held power at the state level in Delhi, though the federal government was with the Congress.

the urban movements … I mean, they are lawyers themselves ... they can't set aside the system."

In all the evictions I have seen, argues Kalyani, "it very soon fragments out into those who feel they have a better chance to claim under resettlement and those who know instinctively that they have very weak footing there and so they try to fight with what they have. *Bahut jaldi ho jata hai* (it happens very quickly)." In one sense, this desire not to "fight" but to try and secure some form of resettlement and benefits is the argument made by the Alliance. Yet Sheela Patel and the Alliance make a clear argument that this desire not to fight but to negotiate, to go "beyond eviction," is primarily a gendered order that emerges from women's groups within the Alliance. The desire to negotiate, rather than confront, is presented as a call from Mahila Milan, the part of the Alliance composed of women's federations and associations. In the case of evictions of pavement dwellers, the Alliance argued that it was the women who argued for negotiations with the state rather than protest: "The women said '. . . we don't want to fight and we don't want to stay on the pavements either! Go and speak to the municipality and to the state government and see if you can explain to them our situation'" (Mitlin and Patel 2005). As Roy has noted, "negotiated development is presented not as SPARC's mandate but rather as a strategy of citizenship emerging from the experience of poor women" (2009: 164).

Activist perceptions of responses to eviction in Delhi suggest a different division – one determined by the capacity of different residents within the JJ Cluster to negotiate in the first instance. In the case of Vikaspuri that began this chapter, Ramendra echoed Kalyani's narrative of Pushta. *"Log unity me nahi rahe* (people did not stay united)*,"* he said, *"struggle-based route hum nahi jaa sake* (we could not take a struggle-based route)*."* He described the division thus:

> There was a split between the "trading community,"[214] you could call them, who owned small shops, *chai* shops,[215] *redis*[216] and the daily workers – construction, domestic workers. The traders wanted to get as much resettlement as possible. The daily workers wanted to fight *(laddna chahte the)*. The traders tried to reconcile and say lets challenge it in the Supreme Court, but the workers wanted to fight right there.

For Ramendra and Kalyani, the calculus between negotiating for better resettlement versus trying to resist eviction, as well as the strategies to be used ("lets challenge it in the Supreme Court" vs. "lets fight right there") is not just a gendered order. Instead, it is one significantly determined by layers of security and vulnerability *within* the residents of the JJ Cluster. It is determined by one's location as a "trader" or "daily worker," proxies perhaps of the ability to recover from an eviction, to have assets and resources that could be damaged or lost during the process of eviction, to have the savings or safety net to begin again in a resettlement site as well as to have the ability to negotiate with "authorities" to ensure resettlement. Spaces of political engagement, therefore, are

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[214] The words "trading community" and "traders" were used in English.
[215] Small tea stalls, usually on street corners and pavements, often made with nothing more than a few bricks fashioned into a stove with a gas burner.
[216] A mobile push-cart on which goods ranging from small consumer items to vegetables can be sold.

accessed differently by different groups within the "poor" along a series of fault lines that eviction both exposes and exacerbates.

Yet there is a second layer of complexity that we must note: the fact that the eviction order has come from the Court. Ishwar Singh is a member of the *Nirmaan Mazdoor Panchayat* (the Nirmaan Workers Council). Nirmaan is also a member of Sajha Manch but in its individual capacity, it is an association for construction workers seeking to further their social security, minimum wages and workplace safety.[217] Speaking of an eviction in 2006 in Banuwal Nagar,[218] Singh recounted a story of negotiated resettlement that aligns with the narratives and strategies of the Alliance. The residents of Banuwal Nagar negotiated with the DDA and the police to voluntarily break their own homes. Singh recounted it with some pride:

> We wanted, like human beings *[insaan ki tarah]*, to leave our place and go to another. We didn't want the police force to come after us, or that the police would create such terror *(aatank)* that someone will get beaten, fires will get lit, or some people will die. We wanted to be given a slip [for the resettlement plot]. We get the slip in one hand, we break our own homes with another.

Singh remarked that the JJ Cluster was made almost entirely of people who were eligible for resettlement. A pre-eviction survey included nearly everyone -– "*95% logon ko parchi milee* (95% of the people got slips)." There were very few people living on rent, he said, and almost everyone had been there for long enough to be eligible for resettlement. Another part of the calculus thus emerges: the quantum of residents in a JJ Cluster that are eligible for resettlement. As I shall argue later in the chapter, when this quantum is lower it can rapidly turn into yet another fault line on which divisions emerge.

Yet there is a preceding question to ask: how and why did activists in Nirmaan decide to enter into such a negotiation to "break their own homes" – one so similar to Ramendra's narrative of Vikaspuri that began this chapter? Singh was categorical that resettlement was a terrible outcome for the residents of Banuwal Nagar. He spoke about the distance to the resettlement colony in Bawana (which is far from Banuwal Nagar on the north-western outskirts of the city), of the difficulty of life there, the loss of assets that the community suffered, children who had dropped out of school and the paucity of work. Most people, he said, "don't even live in Bawana because they cannot afford the transportation. They come to the city, work here, sleep on the pavement, and go home once in a two weeks, once in a month."

I asked him then if people in the Banuwal Nagar had discussed refusing to move rather than negotiating resettlement. Our exchange is below with my questions in italics:

> *Was there any discussion in the basti to oppose the eviction entirely?*
> It wasn't our emphasis.

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[217] Ishwar Singh described Nirmaan as a "union" though it is technically not registered as such.
[218] Personal Interview, dated 03.04.2011.

Why do you think that was so?
Kyunki Court ka aadesh tha jhuggi hatane ke liye. Order ka palan toh karna hi tha.
(Because it was the Court's order to remove the huts. The order had to be obeyed).

Singh's statement suggests that the fact that the eviction was seen to be ordered by the Court, rather than the DDA or another part of the *sarkar*, impacted the perception of the very possibility of choosing one within different modes of engagement in the first place. The Court order "had to be obeyed" so the emphasis of Nirmaan's response was at least partially influenced to move from confrontation to negotiation. Ramendra echoed a similar sentiment: "When an order comes from the Court, we know that it is very difficult to stop it." It is not just activists who feel this way, he said. He reminded me of the DDA officer's account of evictions in Vikaspuri– once the Commissioner of Police arrived with the Court order, the DDA's own West Zone Deputy Director threw up his hands.

Unlike the narrative offered by Mitlin and Patel (2005) and the Alliance, Solomon Benjamin and Bhuvana Raman have argued that the "paradoxical situation" where "poor groups" agree to forms of resettlement must be seen in the context of what he calls "the new political and reforms milieu" where "a climate of fear of eviction and the trauma of resettlement" curtails the choices of the poor (Benjamin and Raman 2012: 71). The narratives presented in this section add to Benjamin and Raman's analysis. They suggest first that multiple axes of vulnerability – relative resource privilege, location within the JJ Cluster or within/outside "institutionalized groups" as well as degrees of tenurial security measured particularly in terms of eligibility of resettlement – determine the calculus between confrontation and negotiation at the time of an eviction. Ramendra and Ishwar Singh's accounts then suggest a further complexity to how residents in JJ Clusters decide the multiple ways in which they respond to the threat of eviction: where the eviction notice is seen to originate. Court-ordered evictions seem, to twist Benjamin and Raman's phrase, to curtail the choices of activists.

THE COURT AS A SITE OF RESISTANCE

How is resisting the *sarkar* different from resisting a Court? Activist narratives of resistance highlight a sense of *distance* from the Court. This distance is one that is both a literal expression of barriers to access to the legal process as well as a metaphor for the relationship that activists in urban social movements feel they share with the Court as a site of protest. Key in the former is the role played by the nature of court proceedings – of lawyers, petitions, hearings and dates – while the latter is based on an differentiation between the *sarkar* and the Court as institutions within the state that occupy different political locations in the lives of the residents of JJ Clusters and that thus allow for different spaces of political engagement.

The Right to Fight a Court

In the history of Sajha Manch, it demonstrated against government institutions and urban authorities like the DDA and the MCD numerous times. Yet even through a decade of court-ordered evictions, it demonstrated against the Supreme Court only once and

against the Delhi High Court on only two occasions. The most significant demonstration was outside the Supreme Court in March, 2007. It was titled *Samvidhaan ko Yaad Karo* (Remember the Constitution). A comment by a sitting Judge that giving resettlement sites to "slum dwellers" was like "rewarding pickpockets for stealing" had been reported widely in the media and there was an uproar within Sajha Manch.[219]

People felt, Ishwar Singh recounted, angry enough to do what they would not normally do – to protest in front of the Court itself. I asked him why protesting in front of the Court was seen to be so different from protesting in front of the DDA. He replied it had been "very difficult" to mobilize people to agree to protest outside the Court. He reasoned:

> *Sarkar se ladna humara hak hai. Court ke khilaaf pradarshan karna … uska koi right nahi banta hai. Court ek aishi cheez hai.. kissi bhi violence ke khilaaf court jayega aadmi… court ke khilaaf demonstration karein toh Court ki tauheen hoti hai… iss vajah se aam adadmi hai ya jo budhjeevi bhi hain, yeh leke jaate hain ki Supreme Court hai… usse manniniye Supreme Court karaar diya gaya hai… uske khilaaf tab hi hum jaayen jab bahut bada ati hua ho…yeh ati hua isliye hum gaye.*

> (It is our right to fight the executive. There isn't a right to demonstrate against the Court. The Court is a kind of thing… you go to Court against any kind of violence… if you protest against the Court, then the Court is humiliated *(tauheen)* ... this is why the common man and even the wise people in society don't ... they take it as a given that the Supreme Court is… it is declared as the Honorable Supreme Court… You can only go against it if you have been very seriously wronged ... this time we had been wronged that way so we went).[220]

Over five thousand were expected at the protest. A year earlier, under the leadership of a former Prime Minister named V. P. Singh, nearly 40,000 people had marched against the sarkar to protest against homelessness, eviction, unemployment and inflation. Sajha Manch had accounted for many thousands of people who were at that rally.[221] On the day of the protest outside the Supreme Court, however, only a few hundred people appeared. I asked Singh if people were scared to protest in front of the Court. He said: "see, revolutionary anger *(aakrosh)* does not fear anything. But there is question of respect *(maryada)*." He differentiated, again, between protesting in front of the Court and the *sarkar*: "it is the responsibility of the government to provide facilities the public. If they don't do so, it is the public's right to protest and fight against the government." He paused and then said, "but it is true that people also had some fear. They wondered what will happen to us if we go in front of the Court? The comrades *(saathi)* who were lawyers were also afraid of contempt..."

Dunu Roy, founder of Hazards Centre, a people's resource and advocacy centre on urban issues and one of the founding members of Sajha Manch, had a different perspective on the protest that March outside the Court. He argued that the low

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[219] See Introduction and Chapter Three, this volume.
[220] He used the word "Court" in English.
[221] Interview with Dunu Roy, dated 04.04.2011.

numbers did not arise out of fear of the Court but out of divisions within Sajha Manch itself. Recalling Ramendra and Kalyani's accounts of fault lines within social movements, Roy argued that Sajha Manch was divided internally between "funded NGOs" and the "people."[222] The key issue, Roy said, was the emergence of "committee" within the forum as a form of politics. "Middle class individuals," said Roy, "argued that we must have a small sub-committee to take decisions quickly otherwise we can never respond to evictions." Community-based groups and people living in the *JJ Cluster*, he said, did not like the idea of "committees" that took discussions "amongst themselves" as opposed to open, public discussions that took place at Sajha Manch meetings. The logistics of the protest were handled by one such "committee." Dunu recounted:

> Email had suddenly entered the working of the Manch and people in the *basti* had a sense that these "emails" were being sent back and forth with decisions taken without them. One of these had been to do the protest under the banner of "Stop Evictions." This is not our demand, people said. When I asked people why they didn't come for the protest, they said this is not what we want. We are not asking the Court to "stop eviction" because we don't have faith in the judiciary. We want them to remember the Constitution because they have lost their sense of balance.

Much like the narrative offered by the Alliance, for Dunu Roy the banner of "Stop Evictions" emerged because "a whole lot of middle class individuals got involved and took the campaign in a different direction." It was these individuals, he said in an echo of Kalyani's earlier musing about those that had a "sense of faith in the system" that privileged the Court as site of resistance. Roy's then is a different sense of distance from the Court – he argues that "the people" did not see the Court as a site where they could put their demands forward.

Both these narratives indicate a complex relationship with the Court as a site of politics and resistance. While the first indicates a separation in perception of the right to fight the Court in contradistinction with almost an obligation to fight the *sarkar*, the second offers an alternative reading that argues that the Court is an institution that residents of JJ Clusters did not relate to and saw instead as a site of a "middle class" engagement.

The *parcha* produced for the protest straddles the two narratives. Unlike most *parchas* written for distribution at a demonstration, it contains no set of demands – it merely exhorts the need for "the court (*adalat*), the parliament (*sansad*) and the executive (*sarkar*)" to "remember the constitution." The *parcha* lists recent court cases against *bastis*, rickshaw pullers, and industries that were shut down on grounds of pollution causing a significant loss of livelihood to workers. It says:

> Those that work as beggars, wastepickers and recyclers, hawkers, labourers and rickshaw pullers – all of these have felt the stick *(danda)* of the court. Is this what is written in the books of justice – that it is the industrious *(mehnatkash)* poor who are the only ones that are dirty?

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[222] It is worth noting that while Kalyani counted both funded NGOs and non-funded collectives as part of "instutionalised groups," Dunu held "funded NGOs" as a separate category of institutions. Funding in this case usually implies international or domestic donor support or even, in some cases, governmental support.

Yet the demand that follows immediately after this assertion is not one that asks the Court to reverse its decisions or to rule in favour of the city's working poor but, curiously, one that asks it to remember the separation of powers. The *parcha* states: "Article 50 of the Constitution directs that the State shall take steps to separate the executive from the judiciary. Does this not mean that the protection of nature[223] should be left to the Government while the Courts dispense justice? It is important that the Court and the Parliament *(sansad)* have their own spheres of work and maintaining this balance is necessary." This contrasts markedly against the language used in *parchas* against the government, where the demand is repeatedly for the government to intervene, resolve, and act. In a *parcha* entitled "*Andheri Nagri Chaupat Raja* (Dark City, Fallen King), for example, the *parcha* reads with a strident anger that is absent in the *parcha* directed at the Court:

> The rulers want that Delhi's map be erased of *bastis*, cycles and footpaths. They want foreign cars. They want to erase the innocent children that lay in the laps of the poor and make fast food supermarkets instead…. Who makes these policies? In what closed rooms? Who are these white-cloth wearing leaders? What lines do they draw in the city? Do they even know how the poor live, in what circumstances? How they raise their families?

> Should we trust them? It is clear their maps and visions don't have any place for the labourers, industrious workers, women and the innocent. Can't we make our own maps? Come, let us accept their challenge! (Sajha Manch 2001).

"You can't just walk into a Court"

In a landmark Supreme Court case, *S.P. Gupta vs Union of India* (1982)[224] – popularly known as the *Judges Transfer Case* – Justice Bhagwati eased the rules of *locus standi*, i.e. the rules that governed who could appear before a court, specifically for the regional High courts and the Supreme Court of India. Within a unique judicial innovation called the Public Interest Litigation, he did so to enable those in a "socially and economically disadvantaged position" who were "unable to approach the court for relief" to access justice through the highest courts of the land. Yet the Court recognized that the poor themselves often could not approach the Courts personally for geographic, financial, linguistic and many other reasons, especially if they were in situations, for example in prison where many of the first PILs originated, where their ability to do so was completely restricted.

The Courts thus took on several mechanisms to bring the poor to Court. Requirements for the filing process were eased to the point that that it was commonly said that, "the

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[223] Cases of industrial closures that led to significant livelihood losses, of eviction and of the forced (and costly) conversion of auto-rickshaws to compressed natural gas had, according to Sajha Manch and other commentators (see Baviskar, 2004, Ramanathan 2004, among others) as "environmental protection." Hence, the reference to the "protection of nature" in the *parcha*.

[224] S.P. Gupta v Union of India (1982) AIR SC 149. In this case, the matter of judicial accountability and the system of appointment of Judges – a critical post-Emergency topic – was brought to the Court by lawyers, not judges themselves. The lawyers for the Union of India argued that the lawyers had no *locus standi,* i.e. they weren't affected parties since their own appointments were not the matter in question. The Court argued that the lawyers had a right to raise an issue of substantive public interest.

court treated even a simple letter as a litigation,"[225] taking upon itself the costs of litigation as well as the work of gathering facts and evidence. The Court also allowed, unlike in traditional legislation, parties not directly affected to speak for and represent the interests of others, presumably the poor. PILs thus opened up the door to "ordinary citizens" to approach the highest courts of the land in matters of public interest either to "espouse the cause of the poor and oppressed (representative standing), or to [seek] enforcement of performance of public duties (citizen standing)" (Rajamani 2007: p. 1, fn 4) but it also imagined civil society associations, NGOs, and individuals to speak for the rights of others.

Yet despite these innovations and a long history of the presence of social movements within the Courts using public interest litigation, an argument that emerges repeatedly from activist narratives of resistance is a sense of literal and symbolic distance from accessing the Court. You cannot, argued Sreerekha, a member of Jagori at the time of the Yamuna Pushta evictions, "walk into a Court and ask it what it is doing."[226] People's response in the JJ Cluster, she argued, "was to go to the DDA and the Municipal Corporation of Delhi (MCD) offices. These were the spaces they recognized, the people they felt they could talk to." Often, she added, there was also confusion about whether the eviction notice had come from the Court, the DDA or the MCD. "The DDA officials would often pretend that it was their thing and that they were in control," she said, "and you didn't realize that they had no discretion until it was too late. People did know that the Court is involved somehow but there is no direct way to interact with the Court, no way of making contact. This distance makes it hard to know what can be done."

Sreerekha argued that this distance was, in part, maintained by controlling access. She argued that:

> The MCD and DDA are *sarkari* institutions with which people have always had contact. There are offices they can approach. When you say the Court who do you mean? Lawyers. And only those lawyers who do Public Interest Litigations… so there are some lawyers who they trust ... but even when something goes to Court, they cannot do anything with whatever has come out. The Court is the most distanced thing from them… it was through lawyers only that they know.

Jawahar Raja, a lawyer who filed a number of cases in the Delhi High Court attempting to prevent evictions, agrees. "You go to Court only when the Court calls you," he says. "There is this certain respectful … reverence is the word for it … for the Court process. I think for the middle classes it isn't that bad – if you are middle class, you would have gone or conceived of going to the Court at some point or the other. You know what it is. It isn't like that for most people."[227] Sreemoyee Nandini, another lawyer who has represented *bastis*, agreed: "the ration office, the municipality, the public fair

[225] Letters to the Supreme Court were indeed treated as PILs in *Sunil Batra v Delhi Adminstration* (1980) 3 SCC 480, *Dr Upendra Baxi v State of UP* (1983) 2 SCC 308, *Veena Sethi v State of Bihar* (1982) 2 SCC 583, *PUDR v Union of India* (1982) SCC 253, *Bandhua Mukti Morcha* v. *Union of India*, (1984) 3 SCC 161 and *Nav Kiran Singh* v. *State of Punjab*, (1995) 4 SCC 591; among many others.
[226] Personal interview, dated 07.09.2011.
[227] Personal interview, dated 08.10.2011.

price shop, the government office… those are the legal spaces of the poor. It is like the Court is a mythic beast, it's not a real thing."[228]

The distance from the Court is heightened by the role played by lawyers as both interlocutors but also as reminders of the barriers to access. Lawyers embody and arguably perform a sense of legal expertise, of being the ultimate arbiters of deciding the legal process in what otherwise were spaces based on discussion, consensus and public decision-making however imperfectly they functioned at times across multiple fault lines. Kalyani recalls that the presence of lawyers became all the more marked as evictions proceeded in Pushta. "There was too much dependence on them," she said. "I remember conversations with Colin and Prashant,[229] saying .. write it this way, don't write it that way… in the petition, I mean… and they would say, 'listen, let us handle the Court thing. After all, there is an urgent priority here to get a stay against the evictions'… I think that's the trap we all fell into."

Prashant Bhushan is an eminent senior lawyer in the Supreme Court of India who has represented *bastis* in numerous cases and filed on behalf of the DSS in the Vikaspuri eviction that began this chapter. In response to my question on whether *basti* groups and activists are part of the discussion on framing the arguments of a petition, he was quite categorical: "No. I don't discuss these things because I have enough understanding of these things. The petitioners are either activists of these NGOs in the *basti* who usually do not have any understanding of the law or legal arguments, or these *jhuggi* dwellers[230] who also do not have any understanding therefore you have to fashion the petition in accordance of your own understanding of the law and their rights."[231]

Ramendra remarked that once the eviction orders had come from the Court, they knew "*ki ab mamla legal ho gaya hai* (now the matter has become legal)." When I asked him what he meant by "becoming legal," he said that the process would become something "out of our hands" – it will "be about lawyers and orders, all of which we will hear about at a distance." Ramendra and the DSS had worked with Bhushan on the eviction of Vikaspuri that began this chapter. They had lost. He recounted, at the time, working day and night with Bhushant's junior staff, giving them the logistical information they needed from the case. Those were, however, the only conversations that he had – he did not see the petition before it was filed.

Raja argues that, even if lawyers like him wanted to, "there is literally no time for that kind of discussion." Petitions, he argues, are filed often right as eviction notices have been issued or even when demolitions have begun. The sense of "suddenness" and urgency that Kalyani recounted was so powerfully present during evictions at Pushta makes the legal process one that is a knee-jerk reaction. Yet it is perceived to be impossible to approach the Court at any other time that is not at the eleventh hour just

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[228] Personal Interview, dated 09.10.2011.
[229] Prashant Bhushan is an eminent senior lawyer at the Supreme Court of India who, along with Colin Gonsalves also has a history of representing *bastis* in Court.
[230] Jhuggi literally means a small, fragile hutment and is also a colloquial word for the shanties or hutments of the poor.
[231] Personal interview, dated 02.04.2010.

as evictions are occurring. As Ishwar Singh argues: "going to Court unless you had to would mean putting your hand in a bee's nest. It would be like asking: so, when are you coming to destroy our homes?"

Rights In a "Legal Sense"

Beyond the decision whether and how to negotiate with or confront the Court is the question of the claims that are to be made to it in either case. In the previous section, I highlighted the perception that lawyers possessed "the expertise" of writing legal arguments and pointed out the distance that activists felt from participating in the framing of these arguments. In this section, I assess how this distance shapes arguments made within the Courtroom on the rights of the residents of JJ Clusters by continuing to contrast these arguments with those made outside the courtroom by social movements. I do so in order to argue that rights understood and argued within the form of a legal petition differ from the understanding of rights within social movements both in their content as well as in the their understanding and conceptions of the claimant of rights themselves.

Defining a Rights-based Argument

Why should the residents of JJ Clusters not be evicted from what is, after all, not their land? Any resistance to eviction must grapple with this question as must any articulation of rights to or in the city. "In a court of law," argues Prashant Bhushan, "you have to make an argument which is logical and legally sensible." A "legally sensible" argument in answer to the question above, he says, is this:

> Every citizen has a fundamental right to housing.. these are poor people who have no other access to housing except this.. if they had any other access to housing then this argument would not apply.

The core "legally sensible" basis of the right to stay in place for the residents of JJ Clusters, according to Bhushan, is indigence. "It is legally unsound," he argues, "to use an argument as an absolute that, look, these people have been in that *basti,* they are workers, they have built that *basti* so they have a right to it. They don't. Legally, they don't." He is dismissive of what he calls "confused rights-based arguments":

> There is a confusion among a lot of activists in the country. There is a mental confusion about what is a rights-based argument … or what is the right. There is no absolute right to sit on government land. That right is only there if you are so poor and indigent that you cannot afford any other housing. That is the only right you have.

Bhushan is arguing against claims often made by social movements like Sajha Manch and the National Alliance for People's Movements (NAPM). Responding to evictions in Mumbai, the NAPM has argued: "In Mumbai, 60 per cent live in the slums. Shouldn't they have a right over 60 per cent of the land in Mumbai?" They argue further that the poor have a right to "not just the physical space, but political, economic and social space. The voting rights guaranteed by the Constitution do not mean that they have a say only in the political decisions— that applies to economic and social decisions as well" including the right to decide how to use and allocate urban resources including

land and infrastructure (Patkar and Athialy 2005). This is a key demand within the right to the city.

For Bhushan, this is precisely an argument that is not "legally sensible." Yet Bhushan's own confident assertion that a "legally sensible" argument on rights must draw from legally accepted rights is itself on shaky ground – there is no explicit fundamental right to housing in the Indian constitution unlike say the Right to Education. When he says that "every Indian citizen has a fundamental right to housing," Bhushan is relying on precedents set by the Supreme Court that has previously read the Right to Life to include the right to basic needs including shelter. "Not all judges accept this," he admits, "not all judges believe that there is an obligation to meet basic needs as part of fundamental rights." Bhushan's position then is an interpretation of a right-claim that he believes can be made effectively within a Court rather than a clear textual right. He is, in other words, making precisely the same "mistake" he accuses activists of making: indigence is not a "right" but a claim to a right to have rights. In his position as the legal representative of the residents of the JJ Cluster, however, he rejects outright claims like those made by NAPM that are also claims to a right to have rights, regardless of the current articulation of text-based rights within law and the constitution.

Jawahar Raja and Sreemoyee Nandini, lawyers who filed an intervention on behalf of a settlement called Sanjay Basti, present a second aspect of a "legally sensible" argument. Disagreeing with Bhushan, Raja categorically rejects the idea of rights having any purchase in the Courts even in a 'legal sense.' "I could have taken the entire argument about fundamental rights out of our petition and I don't think it would have made any difference. We were so sick of arguments based on the Supreme Court's reading of fundamental rights." Nandini argued further: "there are so many grand pronouncements that the Court has made about fundamental rights. What do they mean? Nothing."

Raja and Nandini, in jointly drafting the petition, chose to make their arguments "binding in legal sense as much as possible." By this, they meant that they tried to limit the "discretion of the Court as much as possible to textual law." This was, Raja argued, "not a place to debate what the poor deserved." Their strategy was to "remind the Courts that, no matter what you think of the *basti,* or of the people who live within it, you can't just throw them out without due process." The petition relied heavily on the process of eviction described within policies of the executive, including commitments to resettle, notice periods and the requirement to survey the existing population before evictions. They argued: "we knew that we were going towards a hostile court. We wanted to just to say to them that this is the law .. you may think slums are an eyesore but you can't go just ahead and order demolitions without any relief. You may think that it's violating someone's right to life and a good environment but it isn't in your power to do it without resettlement as laid out in government policies."

The Limits of "Legal Sense"

If rights-based arguments had to be legally sensible to be used within the Court, then what kinds of arguments remained beyond the bounds of the Court? It is here that an analysis of the *parchas* produced by Sajha Manch proves illuminating. An argument

emerges from these *parchas* that is markedly absent in legal petitions arguing for the rights of the poor within the Court: the need to challenge the "cut-off date."

In determining whether households in a JJ Cluster to be evicted are eligible for resettlement, the cut-off date represents the year before which households must have settled in the JJ Cluster. In other words, it measures the length of residence as a basis (as well as a pre-requisite) for eligibility for resettlement. There is an apparent contradiction in the idea of the cut-off date. If the act of occupation of public land is an illegal act, then it is so for those who committed this act before or after the cut-off date. Yet the consequences of committing the same action are different depending on when it is done. Further, the right to shelter that Bhushan argues for is based on formal citizenship in the nation-state rather than length of residence in the JJ Cluster. There seems to be, on the face of it, little justification other than a desire to reduce numbers of eligible households, for the cut-off date to be logical and even, in Bhushan's terms, "legally sensible."

In *parchas* written by the Hazards Centre, one of the main members of Sajha Manch, the cut-off date is unambiguously challenged using precisely this argument. In a *parcha* entitled *Punarvaas ki Rajneeti* (Resettlement Policies), the writers ask: "*cut off date jaisi cheezen sarkar tay hi kaise jab rehna ko aavaas har nagrik ka maulik adhikaar hai?* (How can the executive even set something like a cut-off date when the right to shelter is every citizen's fundamental right?)" (Sajha Manch 2010). It further asks: *Logon ke hak kya hain aur unhe kaise dilaya jaye? Aaj zaroorat hai sarkar ko yeh yaad dilaane ki right to shelter yaani aashray ka adhikaar moulik adhikaar hai* (What are people's rights and how do we attain them? Today, it is necessary to remind the executive that the right to shelter is a fundamental right).

No petition representing residents of JJ Clusters in the Court has ever challenged the cut-off date and the exclusions it represented for resettlement despite the fact that this issue was central to social movements in the JJ Cluster and to residents themselves. In fact, in one of Bhushan's own petitions where he represented the National Alliance of People's Movements (NAPM), a large number of residents are summarily excluded from relief by Bhushan's petition itself. The petition argues that, "about four to give thousand of these *jhuggies* [on the site in question] have been in existence at the site for over twenty years and have ration cards, voter cards and other documents to establish this fact." It then goes onto say in the very next line: "other jhuggies came up later, many with the help of local *dadas*, jhuggi lords[232] and politicians, often with the connivance of the police and other public authorities. Some of these are also post-December 31, 1998, origin and hence ineligible for any relocation benefits."[233] This is a remarkable exclusion in a petition meant to protect the residents of the JJ Cluster from eviction and one that represents the National Alliance of People's Movements, who have argued, as was cited earlier, that as sixty percent of the city's population, the poor should have sixty percent of the city's land. This legal strategy represents a different kind of calculus, one that

[232] Dadas and Jhuggi Lords ('slumlords') are both terms used colloquially to define "strong men" with strong associations with criminal activity or intent.
[233] National Alliance of People's Movements vs National Capital Territory of Delhi CWP 4229 of 1996.

evaluates not just arguments that are "legally sensible" but also claimants that are legally defensible within Court.

The cut-off date shows the government's ambiguous relationship with the JJ Cluster. McFarlane argues that, "it is in the cut-off date that we see formal acknowledgement by the state of its approach to 'slums' as simultaneously violent and regulatory, sovereign and disciplinary."[234] Yet court-ordered evictions present a caveat to McFarlane's claim: it is not the approach of the "state" but that of the *sarkar,* i.e. the executive within it. When asked about challenging the cut-off date within the Court, Raja replied that it had been discussed but that the lawyers all felt that, "no Court would have set aside the cut-off. Even getting them to acknowledge that the Government had a cut-off date was hard enough. Now telling them you must set aside the cut-off date… it was just going too far."

CLAIMING RIGHTS: WHO ARE THE POOR? WHO ARE CITIZENS?

Yet the most significant differences between the conception and use of rights within and outside the Courtroom lies in the imagination and descriptions of the claimants of rights, i.e. the JJ Cluster residents themselves. Rights-based approaches have long struggled with the question of who can effectively claim rights or, put another way, who can be recognized as a legitimate holder of rights? Many of the cases filed on behalf of JJ Cluster residents share a similar description of the petitioners. It typically reads as the one excerpted below from the petition filed in the Delhi High Court seeking to prevent the Vikaspuri evictions whose story began this chapter:

> Petitioner No 1 is 58 years old and has been living in the New Sanjay Camp Cluster since 1981. He works as a casual labourer in nearby industrial units and earns about Rs 3000 a month. He is having four members in his family including his wife and three sons. He does not own any land or house and therefore, demolition of his jhuggi will definitely render him and his family homeless as he cannot even afford any rented house or room in a city like Delhi. He is having the VP Singh card issued in 1990 and Voter Identity Card issued in 1998.[235]

Another petition reads similarly:

> The petitioners are poor slum dwellers. Some of them, who are male members, are earning their livelihood as daily wage workers, rickshaw pullers, barbers etc. They are mainly landless dalit labourers who have come to Delhi for earning their livelihoods as there was no work opportunity in their villages. Thus, they are very poor, earning Rs 2000-3000 a month and running a family comprising, on an average, of five members of on such meager income. Rest of the petitioners are women who along with their children are totally dependent on the meager income of their husbands. All the petitioners are having documents like ration cards, voters identity cards, as residential proofs.[236]

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[234] McFarlane 2006 as cited in Roy 2009: 173.

[235] Dev Chand & Ors vs Union of India CM 6982 of 2007 in Kalyan Sanstha vs Union of India CWP 4582 of 2003.

[236] Ram Rattan & Ors vs Comissioner of Police & Ors, Special Leave Petition (Civil) 3732 of 2005.

JJ Cluster residents appear, uniformly, as "poor, hapless slum dwellers" or "unfortunate citizens." They are "landless dalit labourers" who come to the city only because there is no work in the village. Their families are – especially women and children – are "totally dependant" on the male members. From this location, the only rights claim they can make is precisely one that is outlined by Bhushan as "legally sensible": a claim based on poverty that justifies their occupation of public land. Both the petitions above were indeed filed by Bhushan's office. Yet he is far from alone in his concerns. Filing for Sanjay Basti, Jawahar Raja recounts looking at the narratives of the petitioners and feeling the same anxiety. There is, he argues, this pressure to cast the poor as "victim figures" because "somewhere you are asking for a waiver of norms [when you ask for an eviction not to occur]. So somewhere in addition to asking for legal basis of that waiver you also need to have the sympathy of the court." Raja recounts reading the profiles of petitioners in his own petition carefully. "I remember," he says, "specific lines I was very nervous about was somebody saying not just that they had paid someone for their hut and were also buying other durables … a refrigerator or something… stuff like that.. I was extremely nervous about that.. and sure enough the Judges picked up on that.. they said you know these guys are buying and selling property.. they are trading in this… its not even their land so how can they be doing this?"

Nandini recounts discussing an argument that would talk about, "how resourceful these people are, how little they use to survive .. to push it to a legal argument to say that this is the best use of the land.. I think it was too far fetched… I think they would say.. I think they would laugh… I think there is still a strong sense of the slum being a eyesore… I think the judge would look at you and laugh. Surely it is not that far fetched to say that housing is in the public interest, but somehow…"

Nandini was prescient: none of the PILs filed on behalf of JJ Cluster residents makes an argument that, in fact, these clusters are the best use of public land given that they house a large number of the city's poor. In the *parcha* written for the demonstration outside the Supreme Court in 2007, Sajha Manch asked:

> "Kya humara yeh farz nahi banta ki hum poonche ki 'sarvajanak' karya aur neeti kya hai? Kya samvidhaan ke mutabik hotel, mall, metro, flyover, sadak, park 'sarvajanik' hain? Ya kya sarvajanik ko samvidhaan ke saath baandne ki zaroorat hai? (Is it not our duty to question what "public" works and policies are? Is it that, according to the Constitution, hotels, malls, metros, flyovers, roads, and parks are "public"? Or is it that we have to remind the Constitution what "public" is meant to be?) (Sajha Manch 2007)

Yet this claim that JJ Clusters represent a higher priority in the determination of the "public interest" as they provide housing was not one ever made within the Court, even within a public interest litigation! The "victim figure," though legally sensible, can make only a particular claim to relief and public interest, one that is based on sympathy and an exception of norms rather than any recognition of entitlements or industriousness.

In the *parchas* produced by Sajha Manch, however, the "hapless slum dweller" is not to be found. Instead, the terms used are unequivocal: *basti* residents are described as *shehri mehnatkashi*, or just *mehnatkashi*, meaning "industrious" or "enterprising" individuals. *Bastis* are described as *mazdoor ki basti* or worker's settlements (See, for

example, Sajha Manch 2005; 2007; 2010). The narrative of migration is described as one of development rather than simply distress, with the settlement of the *basti* as a key part of the narrative. As Ishwar Singh argues:

> *jab aadmi migrate karta hai toh iska koi astitiva nahi hota hai.. astitva tab banta hai jab who apne aap ko stapith karta hai… jhuggi wala hoon ya beghar hoon… basti banake shehar banata hai.. ameer aur gareeb ke ghar banata hai.. iss baat ko agar court samjhe to hiss tarah ki judgment nahi degi…* (when someone migrates [to the city] then he doesn't have an identity *(astitva)* .. he makes an identity when he establishes himself.. either he becomes a *basti* resident and becomes something or he is homeless.. in making the *basti*, he makes the city… he builds the home of the rich and the poor… if the Court understood this, they would not give judgments like this.

Migration is also implicated as a state strategy rather than simply a movement of distressed rural workers. Workers, argue Ishwar Singh, are brought to the city and often settled by contractors and government officials in JJ Clusters. The narratives of why these clusters are built differ from legal arguments. Rather than portray them as just a last resort of those in need due to poverty and indigence, the government is squarely implicated in their construction. In a parcha called *Kala Kanoon, Kanna Kanoon* (Black Law, Blind Law), Sajha Manch activists argue that "while the Court judgments have also blamed the DDA and the MCD for encroachment of their own, they have not recognized that is these authorities that have denied housing to the poor" (Sajha Manch 2005). The *parcha* goes onto argue that, "the Delhi Government itself admits in its affidavit in the Court that the growth of *bastis* is a result of the government's failure to provide low income housing to the poor."

The JJ Cluster, therefore, in this narrative, is a result of a state failure to provide housing – a line that Sajha Manch has consistently taken and also articulated in a *People's Housing Policy* drafted by Hazards Centre on "behalf of Sajha Manch" (Hazards Centre 2003: 1). The policy re-iterates the *parchas* that follow it: "the working population," it argues, "has not been provided with shelter by the planners and housing agencies and, hence, has had to settle on whatever land is available – much of it earmarked for residential purposes anyway" (2003: 10). Here, a different claim to rights emerges, one that is based not on indigence but on a history of state failure against its own claims for the provision of housing.[237]

THE JURIDICALISATION OF RESISTANCE

Through this chapter, I have sought to assess changes in the nature, forms, claims and strategies of urban social movements that seek to prevent eviction, or at least ameliorate the process of resettlement, when faced with court-ordered evictions in Delhi. I argued for a diverse set of impacts.

One, I argued that existing fault lines within urban social movements on choosing between (or simultaneously using) multiple strategies of resistance are further

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[237] For details on the history of housing, and low-income housing in particular, in Delhi, see Chapter Two.

complicated when the object of resistance is the Court rather than the government. Already complex divisions on axes of gender, class and vulnerability continue to play out in the decision of how to resist a court ordered-eviction even as activists additionally struggle with the belief that a court order cannot be contested at all, on the one hand, or arguing that it is not a site where residents of JJ Clusters can and should voice their demands, on the other.

Two, strategies of resistance are further compromised as the right and obligation to contest the *sarkar* is contrasted with the sense among activists that they don't have a right to fight the Court. This sense is strongly rooted in a sense of distance from the Court – both in the literal barriers to access ("you can't walk into a court") as well as the symbolic distance in the imagination of the social and political position of the Court in the lives of the residents of JJ Clusters. As the lawyer Nandini argued: "The Court is like a mythic beast, it's not a real thing." This sense of distance is constituted in part by the role played by lawyers as both interlocutors but also symbols of the barriers to entry for the poor within the legal process. Ramendra's musing that "*ab mamla legal ban gaya*" (now the matter has become legal) implied an acknowledgment of this distance between political processes within social movements and the legal process.

Three, this distance then manifests itself in the very composition of right-claims that are made by and on behalf of residents of JJ Clusters. Rights in their "legal sense" are bound by the limits of arguments that lawyers believe the Court will recognize as legitimate. Arguments made by residents in movements spaces – particularly those challenging the cut-off dates and questioning the public purpose for which the land under the JJ Cluster is required – therefore cannot be "legally sensible" though they form a core of right-claims outside the Courtroom.

Four, and finally, it is not just right-claims that must be "legally sensible" but the residents of JJ Clusters themselves that must be framed as legally recognizable and defensible petitioners. This has two significant consequences: the portrayal of these residents as helpless and indigent to gain what Raja described as the "sympathy of the Court" and the exclusion of those residents that do not meet the cut-off date from any presence within the Court.

Taken together, therefore, the impact of the presence of the Court within the calculus of resistance challenges the choice of strategies, introduces new actors and decision-making processes into movement spaces, alters the content of right-claims and forecloses certain kinds of claimants just as it shapes the political identity and history of JJ Cluster and its residents themselves. It is this impact that I term the *juridicalisation of resistance.* What are the implications of such a juridicalisation?

Re-Negotiating the Space of Political Engagement

Juridicalisation challenges both to the right to the city and rights in the city. The former represents a claim that challenges the bounds of legal sensibility as seen in the inability of lawyers to challenge the cut-off date or to argue that the JJ Cluster represents the highest expression of public interest. The latter highlights the distinction in negotiating *within* the state with the executive versus the judiciary as well as the limits that the each

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puts on the other. Different spaces of political engagement, in other words, foreclose certain modes of engagement as well as possibility and forms of either negotiation or confrontation. For social movements in Delhi, these distinctions presented themselves in narratives of both a fear of and distance from the Court, curtailing (to twist Benjamin and Raman's phrase) the choices available to the activists within urban social movements.

The "politics of patience" or the "politics of negotiation," for example, is altered in content and in implication when it faces the judiciary rather than the executive. Claims that can be made to the *sarkar*, as this chapter has shown, are often not made to the Court. What does this imply for urban movements? It suggests, for one, the importance of a framework of entitlements that takes the form of textual and statutory rights. Let me cite an anecdote to illustrate this point. I argued earlier in this chapter that there is no constitutional Right to Housing in India as there is, for example, a Right to Education. In a much publicized decision, the National Slum Dwellers Federation, part of the Alliance, had chosen not to join the failed National Campaign for Housing Rights that sought to create such a constitutionally mandated right to housing in the 1990s. They had refused to join the campaign because, as Mitlin and Patel argue, "for the bulk of the [slum] dwellers, the national campaign appeared to have no immediate positive impact on their everyday lives… The president [of the NSDF], Jockin, could see that there were many constitutional rights that were not recognized. What, then, was the point of adding another?" (2005: 19).

It is when we see the "state" not just as *sarkar* but instead as an intertwined regime of rule of both the *sarkar* and the judiciary that the "point of adding another" constitutional right becomes clearer. The absence of a statutory, legally binding right to housing was one part of what allowed the Courts to reject the rights claims of the residents of JJ Clusters and to fail to hold the state accountable for the provision of housing. It is this absence that leaves "indigence" as the only basis for rights claims for such residents. In engagement with the *sarkar*, textual rights may seem trivial due to persistent non-implementation and precisely because the *sarkar* often violates its own laws. Roy has argued that the state can and does "decide what is informal and what is not, to determine which forms of informality will thrive and which will disappear" (Roy 2005: 149) in what is a "spatial vocabulary of control, governance and territorial flexibility" (Roy 2003: 157). Yet within the state, how is this flexibility manifested? The emergence of the Court challenges the flexibility of the *sarkar* in complex ways. Movements that have long sought to tilt the informality of the "state" in their direction armed with the power of their vote and their ability to mobilize publicly thus are faced with the need for new forms of struggle – ones that can affirm and argue for entitlements in forms recognized by the Courts. If a "politics of perpetual resistance" cannot yield sustainable gains, as Parnell and Pieterse argue, it is also unclear how the engagement they advocate can be constructed and constructive when it is not with the *sarkar* but with the judiciary.

Adapting to the emergence of the Court is an immense task for social movements. Attempts at working across fault lines of gender, class, language and differential vulnerability will now further have to engage with a new fault line: legal expertise and

the supposed binds of a "legally sensible" argument. Juridicalisation presents a challenge for movements to translate their right-claims, their political identities and histories, and even their understanding of the processes of city formation and the production of urban space, into legal petitions. A critical example of this is the narrative of the production and settling of the JJ Cluster itself and whether it is presented as a narrative of state failure or one of illegal acts of occupation of public land. Conversely, if movements choose not to negotiate but to confront, it then represents the need for movements to find a way to reject the power of the Court and its pronouncements – to learn, in other words, how to fight the Court on its own terms.

Wither Insurgence?

The differences between right-claims within and outside the Courtroom are stark markers of the limitations of the Public Interest Litigation as a space of justice for the residents of JJ Clusters. The PIL is a space that sought to amend judicial processes in order to further access to justice for the marginalized. Yet, as these judgments show, easing of the rules of standing and representation cannot ensure that the all are actually heard in the Courtroom even if they are present as petitioners. The constraints of a judicial imagination and of the twin binds of legally sensible arguments and legally defensible petitioners again question the limits to the Courtroom as a space of justice in the cities of the South particularly when it comes to the question of the production of space through the illegal occupation of land.

Yet it is not just in "losing" within the Court that the right to the city is lost – it is also within the impact of these judgments on the ability of the residents of JJ Clusters to see themselves as well as be seen by others as having what Holston describes as "the right to have rights." Urban citizens, Holston argues, use a mix of "text-based, special interest and contributor rights" to make claims on the city. They "legitimate these rights and participatory practices on the basis of their contributions to the city itself" (2008: 23).

I have argued in this chapter that, within the Court, residents of JJ Clusters were unable to appear as citizens with the "right to have rights" but instead felt that they had to appear as "victims" whose claim to a right to shelter and housing is based on indigence rather than contribution at least partially because this was presented to them as the only possible legal strategy. One of the reasons that lawyers like Prashant Bhushan and Jawahar Raja give for this is that these residents have no claim, or right, to occupy land that they do not own and have not paid for. Bhushan argued that to argue that the residents of JJ Clusters had any right to remain in *bastis* was "legally unsound" unless made on the grounds of indigence. Juridically, his argument goes, the poor can appear only as particular kinds of citizens: not the *mehnatkash* who build the city as they are in *parchas* but as "poor, hapless slumdwellers."

It is important here to note a distinction between Holston's insurgent citizens in Sao Paolo and JJ Cluster residents in Delhi: a claim to property. Holston argues that:

> Let me emphasize a point often misunderstood by outsiders (Brazilian and foreign): the majority of "slum dwellers" in most Brazilian cities, of those who live in the poor peripheries, are good-faith purchasers of house lots in subdivisions (loteamentos) who have been defrauded in one form or another. They are not squatters

and do not live in favelas. A favela is a land seizure without any payment and is only one of several types of illegal land occupation in Brazil's urban landscape. Thus, favela residents have no claims to land ownership, although they own their houses—an ownership that the state generally recognizes in various ways (Holston 2009: fn 4, p. 265).

JJ Clusters are favelas. In the Court, as this dissertation has argued previously, residents of JJ Clusters were reduced to "encroachers" with no legal claim to the space they had settled in the city. The *sarkar* did recognize their claim to land "in various ways," as Holston says, and this recognition has been the space of political engagement between social movements and the *sarkar* within Indian cities. It is this negotiation that the juridicalisation of resistance forecloses. My intention here is not to discount Holston's narrative of insurgence but to explore why some spaces of political engagement and, indeed, some parts of the same peripheries do not become insurgent.

In particular, I suggest that within the context of claiming space and land within the cities of the South, some form of a claim to ownership has played a critical role in determining the possibility of insurgence in the first place. Within the Court, the absence of any claim to ownership becomes the determining factor in how the residents of JJ Clusters are seen. Juridically, the space of the city is thus read through legal regimes of property and ownership. Without a claim to some form of ownership or at least to formal payment, JJ Cluster residents cannot be legally imagined as anything other than indigent citizens seeking welfare. In the absence of a codified right to housing, juridicalisation thus creates a pre-requisite to right-claims: a claim not to the city but to property.

There is a further impact of the Court's rulings. As Ravi Sundaram has argued, through the circuits of media and information, the transcripts and narratives of the Courtroom have become a widely accessed "archive of the city" (Sundaram 2009). The imagination of JJ Cluster residents within the Courtroom thus travels into the city just as the politics of the city enters the courtroom. Like the idea of the "encroacher," the "poor, hapless slum dweller" shapes the political locations and imaginaries that these residents are then able to inhabit outside the Courtroom. Arguably then, the public debate on the rights and entitlements of the marginalised – which is, in turn, critical to establish statutory and legally defensible entitlements – is one that is impacted by juridical pronouncements that determine these rights in ways that are narrow and curtailed by the need to be "legally sensible."

The contemporary moment and juridicalisation then has thrown a set of new challenges to urban social movements: to challenge the bounds of "legal sense," to question the accusations of "illegality" leveled against them, to see the law and planning as sites of contestation and negotiation, to resist the Court on its own terms through perhaps the creation of new laws like a Right to Housing, as well as to challenge fundamental conceptions of property, ownership, the value of land and estimations of the public. New strategies will have to be conceived, new locations found, and new discourses and languages of articulation created. What is essential for both rights to and in the city is to recognize the particularities of these challenges in order to be able to effectively respond to them. Walking by the River Yamuna where the *bastis* of Pushta once stood, Ishwar Singh said to me, "*ab nahi jayenge Court. Kyun jayen aisa Court ke paas jo aisi*

judgment de jo gareeb ke astitva ko sweekar hi na kare? (Now we won't go to Court – why should we go to a place which gives judgments that don't accept the very identity of the poor, their sense of self?). He stood silent. A few moments later, smiling, he sang a popular slogan used by movements in public rallies: "*yeh to abhi angdai hai, aage aur ladai hai* (this is just a slippery step, there is still a long fight ahead)." The empty ground on which we stood bore testimony that the choice not to engage the Court was not ours to make – ours was only the realization that the nature of the fight had changed once again.

Conclusion

I began this dissertation with a central theoretical and ethical concern: the politics of the production and reproduction of poverty and inequality in the contemporary Indian city and the negotiations of citizenship that underlie it. I sought to write, in other words, an ethnography of inequality in the city. I did so in part because I attempted to read the city from one if its peripheries: the *basti*.[238] The question of inequality is, I argued, the most pressing question that the *basti* asks of the contemporary Indian city and its citizens, of which I am one.

I came to the *basti* through its eviction. Millennial Delhi is a city whose landscape has been scarred by a series of evictions of the homes of the some of its most vulnerable citizens often without any resettlement or rehabilitation. Evictions are not new to either cities or to Delhi but contemporary evictions were different not just in degree but in kind from those that had come before. Evictions at this scale had last occurred in Delhi during what is known as the Emergency from 1975-77, the dark hour of Indian democracy where, for two years, democratic and fundamental rights were suspended and emergency rule declared. Unlike evictions within the Emergency, however, contemporary evictions have occurred through democratic processes rather than in their absence. They mark, therefore, a different set of negotiations, legitimations, processes as well as horizons of resistance. A further factor make contemporary evictions distinct: they were ordered not by the *sarkar* –the institutions of the executive across local, state and federal scales that govern the national capital – but by the Judiciary. Contemporary evictions were ordered by the Delhi High Court and the Supreme Court of India within a unique judicial innovation in India called the Public Interest Litigation that had been established, ironically, precisely to enable the poor to access justice in the highest courts of the land.

To understand how the evictions of the poor can be read as within the "public interest," I argued that we must first understand the *basti* in the particularity of the production of space in Delhi. More than just a built environment, material housing stock, or planning category, a *basti* is a territorialisation of a political engagement within which the poor negotiate their presence in as well as right to the city. It is a spatial manifestation of a negotiation of citizenship if we see the latter not "just as a legal status" but as the "the moral and performative dimensions of membership which define the meanings and practices of belonging in society" (Holston and Appadurai 1999: 4-5). Its eviction then represents the transformation of precisely this political engagement, of an erasure of the poor's presence within and right to the city. Determined within a juridical determination of the "public interest," contemporary evictions represent an altered urban politics where a set of familiar referents– development, order, governance, citizens, and the public– are redefined to not only enable evictions but also to see them as acts of good

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[238] The Hindi/Urdu word *basti* (related to *basna*, to settle) means settlement. Colloquially, it is the word most commonly used by residents of urban poor settlements to describe their homes and hence it is the word used throughout this dissertation. Colloquially, *bastis* are understood to represent settlements typically marked by some measure of physical, economic and social vulnerability. It is these settlements that are often called "slums." Within planning paradigms in Delhi, however, a "slum" refers specifically to a settlement designated as such under the 1956 Slum Areas Act. I use the word 'slum' only to either refer to this specific planning category or to report its use in English when necessary. In relation to planning, *bastis* cover three types of settlements: Slum Designated Areas, Resettlement Colonies and JJ Clusters. See Chapter One for a detailed discussion of these categories.

governance, order and planning. We must, therefore, listen to what evictions are telling us. What they are telling us about the contemporary urbanism in the Indian city, about reformulations of the public, about the complexity of the city as a site of citizenship and about the democratic management, production and reproduction of inequality.

Through the chapters of this dissertation, I showed that evictions make visible a *juridicalisation of politics* in the Indian city. This juridicalisation is marked by the emergence of new frameworks, discourses and practices in urban politics that instantiate themselves in the city through the judiciary rather within the institutional compacts between institutions of representative government and urban authorities – the *sarkar* – and urban residents. The juridicalisation of politics marks the expansion of the jurisdiction not just of the courts but also of the realm of the law within urban politics. As the sphere of authority of the Courts widens in the city, a series of questions, concerns, interventions, processes and debates within urban politics come to be come to seen, articulated, and addressed as juridical questions – they speak and are spoken about within the frameworks of law.

Following my concern with the politics of poverty, inequality and citizenship, I traced this juridicalisation along one particular vector— I showed how evictions were made to make "legal sense" within public interest litigations. Four key frameworks thus emerged: (a) planned illegalities; (b) planned development and/as crisis; (b) the impoverishment of poverty; and (c) the juridicalisation of resistance.

Through these frameworks, I challenged the relationship of "illegality," planning and the *basti*, arguing that if the "dysfunctional landscapes of Southern cities" are indeed caused by the "dominance of informal, unplanned growth," as Vyjayanthi Rao has argued (Rao 2006), then this dysfunction must take into account not just the 'slum' but the production of illegal housing by the middle and upper middle classes as well. Showing that illegality was, in fact, the dominant mode of the production of housing in Delhi, I argued it is within illegalities that the production of urban space in the city must be understood. The questions of urban politics must thus look not at the dichotomy of the legal-illegal but instead at the ways in which planning and planned development produce illegality as well as the processes by which particular kinds of urban practices and actors are framed as "illegal" relative to others and what work such a framing is meant to do.

I showed that the Courts misrecognise illegality in their twin understandings of "encroachment" and "encroacher," seeing the former as the visible manifestation of what they portray as the crisis of the city and the latter as one of the actors primarily responsible for this crisis. As the Courts used narratives of the failure of "planned development" and what they call "Government" to justify their interventions into the city, I described how they attempted to make the city into a "governable space" (Rose 1999) using the "Plan in its legal position" to represent an idealized spatial order. Intervening in the crisis of the city towards this idealized order became, I argued, not only the primary meaning of public interest but also an ethico-moral imperative and a rationality of judicial government.

I argued further that case-law on evictions made visible the impoverishment of poverty, drawing upon Upendra Baxi's concept of impoverishment as "a dynamic process of public decision-making in which it is considered just, right and fair that some people may

become or stay impoverished" (Baxi 1988). The Courts enable impoverishment by through the creation of the category of the "encroacher" that binds their identity to a spatial illegality and becomes the basis of a disavowal of rights as well as through the discursive erasure of the vulnerability of the poor and the emergence of a new "urban majority" as the subject of urban politics. Finally, I showed how the emergence of the judiciary as the site and object of resistance resulted in the juridicalisation of resistance. I used this term to describe the impact of the presence of the Court within the calculus of negotiation and confrontation as modes of engagement and resistance to evictions. The presence of the Court, I argued, challenges the choice of strategies of urban social movements, introduces new actors and decision-making processes into movement spaces, alters the content of right-claims and forecloses certain kinds of claimants just as it shapes the political identity and history of *basti* and its residents themselves.

In the concluding part of this dissertation, I return my focus to the complexity of the city as a site of citizenship and attempt to locate the juridicalisation of politics within two emergent urban moments: new policy regimes of welfare as well as the next incarnations of urban social movements and their claims to the city.

On New Regimes of Urban Welfare

Juridicalisation underscores the importance of a framework of entitlements that takes the form of textual and statutory rights. Earlier in this dissertation, I used the example of the failed attempt at the Right to Housing to show that when we see the "state" not just as executive but instead as an intertwined regime of rule of both the executive and the judiciary, the importance of articulated constitutional rights becomes clearer. The absence of a statutory, legally binding right to housing was one part of what allowed the Courts to reject the rights claims of the residents of *bastis* and to fail to hold the state accountable for the provision of housing. The question then arises: what regime of textual rights, policies and law exists in contemporary Indian cities and what can they offer those seeking to further the right to the city for all citizens?

The Rajiv Awaas Yojana (RAY) is the central government's ambitious policy intervention on housing the poor. Reading the policy, it seems to signal a possible paradigm shift in thinking about urban residents within the history of India's developmental policies. RAY begins with a clear articulation of the right of all citizens to come to and be in the city as well as have shelter within it. It acknowledges the failure of the state in keeping its own commitments to housing the poor as well as not enabling the market to reach them. It attempts through the provision of what it calls (though does not clearly define) "property rights." In many ways, then, RAY is an expression of a right to shelter that stands as a direct response to the "illegality" of the poor.

RAY stands alongside another significant policy move in urban India: the de-linking of legality of tenurial status for households with the provision of basic environmental services. Previously, public service providers were not able to legally provide, for example, environmental services like water and sanitation to settlements in the city that were seen as "unauthorized" or "illegal." New policy paradigms explicitly challenge this limitation. The National Urban Sanitation Policy states that: "every urban dweller should

be provided with minimum levels of sanitation, *irrespective of the legal status of the land in which he/she is dwelling*, possession of identity proof or status of migration."[239]

Similarly, the Government of India's flagship urban program, the Jawahar Lal Nehru Urban Renewal Mission (JNNURM), which includes as one of its two key parts a programme called Basic Services to the Urban Poor (BSUP), argues that its goal is to:

> Provide basic services (including water supply and sanitation) to all poor including security of tenure, and improved housing at affordable prices and ensure delivery of social services of education, health and social security to poor people.

The policy further states in clear terms that:

> All urban poor, in particular slum dwellers, will gain access to basic municipal services such as water supply, toilets, waste water drainage, solid waste management, power, roads, transport, etc. All urban poor settlements will be integrated and mainstreamed with municipal supply networks resulting in sustainable improvements in the quality of life of the urban poor.[240]

This de-linking recognizes the association of the settlements of the poor with illegality and explicitly prevents this spatial illegality from continuing to act as a barrier for them to access services. It implies that the poor appear, possibly for the first time in policies that acknowledge and address their settlement patterns in the city, as citizens with entitlements despite their "illegality."

The provision of such services stands alongside a series of other policy interventions that address impoverishment in the city. These are: the National Urban Livelihoods Mission (NULM), expanded social security schemes for informal work under the Unorganised Sector Social Security Act, the newly constitutionally enshrined Right to Education as well as the expected passage of the Right to Food through the National Food Security Bill that is currently in parliament. Taken together, this set of policy frameworks, interventions and rights arguably represent the beginnings of a framework of social protection for the urban poor – the first such articulation in a nation where developmentalism has been defined by and within the rural. They are, no doubt, a complex and fragmented set of interventions. Some are rights with clear obligations for the state, others are minimum floors or safety nets, some are contribution-based insurance schemes while still others are vision documents that may yet suffer significant losses in translation and implementation.

What they represent, however, are emergent sites for the contestations of urban citizenship. I argued in the dissertation that evictions marked the impoverishment not just of *basti* residents but the impoverishment of poverty itself, i.e. the reduction of the efficacy of poverty as the basis of a political claim to rights, entitlements and, indeed, to citizenship. Yet just as evictions seem to indicate the foreclosure of one set of claims by the poor to the city, the emergent policy landscape possibly offers a new set of locations from which these claims can be made. The de-linking of tenurial legality from the provision of environmental services is just one of the ways these new sets of policies

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[239] Government of India 2006. See Annexure 1, p. 13. Emphasis mine.

[240] See JNNURM: A Brief. Available at jnnurm.nic.in.

may allow the impoverished urban residents to circumvent or overcome their spatial illegality. If urban residents are beneficiaries of livelihood promotions through the National Urban Livelihood Mission or the Unorganised Workers Social Security Act, they are not just "encroachers" but workers. Importantly, they can then access the institutions of the state – the executive and the judiciary – as workers with protected, textual and statutory rights. If all urban residents possess rights to services like water and sanitation as well as education, health and livelihoods, the provision of these entitlements signals the possibility of reconfiguring the presence of the poor in cities as well as reframing how the *basti* is seen within the city. It forces even a juridical understanding of illegal settlement to contend with a set of other imperatives and rights.

These policies particularly enable a broad claim of a right to the city because they are urban policies – they are premised on residence within the city. Unlike previous regimes of poverty alleviation, these policies do not (a) exclusively identify beneficiaries as targeted groups marked by their relationship to, for example, the poverty line, or (b) imagine the urban poor simply as rural residents out of place. Together, they signify a bundle of rights for urban residents to be institutionalized, delivered and protected within the city by its institutions. Further, they use a language of universal rights and entitlements – they do not separate the *basti* from the city, the poor from the elite. They make possible, therefore, practices of citizenship that argue against regimes of differentiation between different urban citizens.

Evictions mark, at least in the current moment, the difficulty of seeking rights and inclusion for a majority of the city's citizens within the judiciary in part because of their reduction to singular identities such as the "encroacher" that binds them to a spatial illegality that becomes the basis of a disavowal of their rights. To challenge this "legal" sense" the poor must appear as citizens with other political locations that are, however, juridically recognized and defensible. Could these emerging policy-enabled locations enable the poor to appear as different subjects and citizens within the Court? Could they enable the executive to alter its own relationship with judicial rulings and power? Could constitutionally protected and more explicitly articulated rights and entitlements within the urban change judicial opinion itself?

On New Solidarities and New Challenges

Juridicalisation has challenged urban social movements in Delhi. I argued in the dissertation that both *basti* residents and activists distinguished the impossibility of confronting the Court as opposed to almost an obligation to resist the executive. The Court seemed distant, an impossible target with its own logics, language, institutional locations and barriers to access. Yet evictions and juridicalisation make one thing clear: the law, and within it the plan, must now become objects and sites of a politics of resistance in the city. How can urban social movements respond to this new frontier of political action?

One, movements must claim the city and not just the *basti*. Urban social movements have rarely articulated their claims as claims to and within the city. I argued in the dissertation that lawyers defending *basti* residents would describe them as "citizens of India," or still describe them as "migrants" even when they had been urban residents for

decades, in sharp contrast to petitions from elite residents who described themselves as "citizens of Delhi." Urban social movements and *basti* residents must re-scale their arguments to the city – they must produce the city through these claims just as the Courts rescaled the determination of public interest to the scale of the city. It is in claiming an urban rather than national citizenship with the city as the primary political community of reference and belonging, to paraphrase James Holston (2008), that the presence of the poor both within and the outside the courtroom can go beyond its reduction to the "encroacher" and "encroachment."

If the Court has reduced the poor to the slum, then social movements must refuse this simplification. They must reinsert the poor into the imagination of the city as city-markers, workers, residents, tax payers, consumers and voters all at once. They must make the slum a *basti.* The emergent policy regimes discussed above allow for such a reframing to be tied with the policy directions of the executive, a move that could both enable a new juridical discourse on the poor as well as hold the executive accountable for the implementation of its policy landscape.

This implies the construction of new solidarities that take an urban location seriously. Social movements in Delhi have often been deeply divided along identity lines like gender and caste or along different types of rights claims – as *dalits*, as women, as workers, as Muslims. The city offers the possibility of both integration as well as intersection across these claims – intersections that reflect more accurately the lived experience of its residents. After all, workers are also Muslim, women are also *dalits.* Can an urban location provide a useful intersection of right-claims to the city? Do movements gain from a shared articulation that grounds at least some part of their claims in a claim to the city?

Two, movements must challenge the very foundations of their exclusion: notions of property, ownership and the value of land and, in the case of Delhi in particular, of the use of public land. The idea of "encroachment" implies that public land cannot be valued in terms of its use by, for example, the city's poorest residents as a source of shelter. Yet if we think, taking inspiration from Brazil's federal law— the City Statute[241]— of the "social function of property," new possibilities of valuing land emerge that give equal precedence to its use rather than reducing questions of its ownership simply to title and estimations of its value simply to its price within the land market.

RAY, for example, speaks of property rights for the poor. Yet what is a property right? Is it ownership? A right to sell and buy? A title? Is it the right to use? The right not to be evicted? Is the right necessarily individual? Can be it communal, co-operative, or common? What rights does one have to land that is "public"? How are "property rights" related to security of tenure – the ability (in many ways as important to the poor as ownership) of being able to stay in place? In a city like Delhi where most *bastis* are on public land, there is another elephant in the room: who decides how public lands should be used and to what ends?

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[241] For more on the City Statute, see Caldeira and Holston and Fernandes

By taking on conceptions and definitions of property and land within the city, social movements can alter the urban landscape as well as challenge the juridical interpretation of property as a particular form of "ownership" rather than a range of relationships to settlement and use. Yet new articulations of these relationships must also ensure that they take a form that is juridically defensible and makes "legal sense." What can these forms look like? On what basis can tenurial security be provided to *basti* residents that is juridically defensible?

Three, movements must make law. In the city, by extension, they must make the Plan or at least find means and mechanisms to reject its juridical power. The juridicalisation of politics in part implies that movements must empower themselves to challenge the Court on its own terms. If the Court is bound by law, then the legislative power of the executive and parliament must become a focus of social movements. Movements of the elite have long exercised this power by using their proximity to the law-making institutions within the state to their advantage. The path for social movements will not be so easy yet too many contemporary urban movements in India have seen institutional reform, policy changes, planning and the law as sites that irrelevant to the lives of the poor who are seen to live beyond the formal world of institutional civil society, outside planning, and outside the world of "policy" except as its distant objects. Juridicalisation erases this distance. It brings, once again, a new set of challenges for social movements to transform, translate and locate an older claim of equality and justice in a new site in Indian politics: the juridical city.

This dissertation marks a moment in which the city emerged into the political imagination of the nation. Contemporary evictions remind us that this moment is one in which rights have been lost, where citizenship is inegalitarian and differentiated, the promise of development is refused, and poverty and inequality are reproduced and deepened. For any effective conceptualization and realization of a just city, we must understand this moment in all its particularities, continuities and discontinuities from others like that have faced us before. The task at hand then is not just to explain evictions but also to listen to what they are telling us— about the city that is as well as the city that can be.

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