

**Sharmila Murthy**, JD, MPA, is a joint Fellow in the Human Rights to Water and Sanitation Program at the Carr Center for Human Rights Policy and in the Sustainability Science Program at the Mossavar-Rahmani Center for Business and Government, both at Harvard Kennedy School of Government, Cambridge, MA, USA.

Please address correspondence to Sharmila L. Murthy, Carr Center for Human Rights Policy, Harvard Kennedy School of Government, 79 JFK Street, Cambridge, MA 02138, email: [sharmila\\_murthy@hks.harvard.edu](mailto:sharmila_murthy@hks.harvard.edu).

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## LAND SECURITY AND THE CHALLENGES OF REALIZING THE HUMAN RIGHT TO WATER AND SANITATION IN THE SLUMS OF MUMBAI, INDIA

Sharmila L. Murthy

### ABSTRACT

*Addressing the human right to water and sanitation in the slums of Mumbai, India requires disentangling the provision of basic services from a more complicated set of questions around land security and land ownership. Millions of slum-dwellers in Mumbai lack adequate access to safe drinking water and sanitation, which places them at risk for waterborne diseases. Many slums are located in hazardous areas such as flood plains, increasing their susceptibility to climate change-related weather patterns. Access to water and sanitation in slums generally hinges on whether a dwelling was created prior to January 1, 1995, because those constructed created prior to that date have greater land security. Although the so-called “1995 cut-off rule” looms large in Mumbai slum policy, a closer reading of the relevant laws and regulations suggests that access to water and sanitation could be expanded to slums created after January 1, 1995. State and municipal governments already have the authority to expand access to water services; they just need to exercise their discretion. However, slums located on central government land are in a more difficult position. Central government agencies in Mumbai have often refused to allow the state and municipal governments to rehabilitate or improve access to services for slums located on their land. As a result, an argument could be made that by interfering with the efforts of sub-national actors to extend water and sanitation to services to slum-dwellers, the central government of India is violating its obligations to respect the human right to water and sanitation under international and national jurisprudence.*

### INTRODUCTION

Millions of slum-dwellers in Mumbai lack access to safe drinking water and sanitation, which negatively impacts their health and compromises their ability to lead lives full of dignity, as envisioned by the Universal Declaration of Human Rights. This paper seeks to contribute to the burgeoning literature on slum policy and access to water and sanitation in Mumbai by examining in greater depth the legal basis of the so-called 1995 cut-off rule. A more nuanced reading of the underlying laws and regulations reveals that there may be potential political or legal avenues for extending basic water services to slums in Mumbai, thereby furthering the realization of the human right to safe drinking water and sanitation for all.

The first section of this article examines how rapid urbanization in India has contributed to poor living conditions in the slums of Mumbai, which are often located in environmentally hazardous places, such as flood plains. The water supply in Mumbai is unequally distributed and biased

toward wealthier communities, who benefit from piped infrastructure. In contrast, access to water and sanitation services in slums is generally poor and waterborne diseases are prevalent.

The lack of access to sufficient amounts of good quality, affordable water and sanitation services in many Mumbai slums stands in sharp contrast to the ideals of a human right to safe drinking water and sanitation for all. As discussed in the second section of this article, the normative content of the human right to safe drinking water and sanitation, as recognized by United Nations, entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water and sanitation services for personal and domestic uses. The Indian Supreme Court has also recognized the right to water and sanitation under the “right to life” provision of its constitution.

The third section of the paper attempts to reconcile the gap between human rights law and domestic policies that govern access to water and sanitation in Mumbai slums. It grapples with a complicated set of planning laws and regulations, focusing on the municipal Water Charges Rule and the state’s Slum Areas Act. Access to water in Mumbai slums generally depends on whether the dwelling was constructed prior to January 1, 1995, even if the dwelling was not considered legal when first built. The evolution of slum policy in Mumbai is discussed in order to provide context for what is commonly known as the “1995 cut-off” rule. Focusing on the “notification” provision of the Slum Areas Act, the article suggests that the state and municipal governments have the legal discretion to expand access to slums that fall outside of the 1995 cut-off rule. To reconcile domestic and human rights law, state and municipal officials would need to exercise this authority. However, this interpretation does not apply to slums located on central government property, where state law is not applicable. The central government agencies that own this land generally refuse to allow the local government to extend services to these communities. As a result, “non-notified” slums located on central government land are in the most vulnerable position with respect to water and sanitation access.

This section considers the slum policies of Mumbai from the perspective of international human rights law and Indian constitutional jurisprudence. That millions of Mumbai’s slum-dwellers do not have access to adequate amounts of safe, acceptable, and afford-

able water and sanitation services highlights the challenges of realizing the human right to water and sanitation. The legal obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR) is not to realize the recognized rights overnight, but to ensure that maximum available resources are being used to ensure their progressive realization in a non-discriminatory way. Under international law, states have an obligation to protect, respect, and fulfill human rights. The analysis suggests that under human rights law, the central government of India has not comported with its duty to respect because it prevents the state and municipal actors from providing access to basic services. A narrowly framed argument could also be made under Indian law that the central government’s conduct violates the right to life provision of India’s Constitution.

In short, the implementation of the human right to water and sanitation in Mumbai requires disentangling the provision of basic services from a more complicated set of questions around land security and interpreting existing laws and regulations in a way that is consistent with India’s human rights obligations.

## HEALTH AND ENVIRONMENTAL IMPACTS OF SLUMS

### *Rapid urbanization*

Rapid urbanization and dense slum populations compound the challenges of providing access to safe water and sanitation services. South Asia has witnessed a rapid rise in urbanization, and approximately 35% of India’s population now lives in urban areas.<sup>1</sup> More than half of the population of India’s largest city, Mumbai, which is located in the western state of Maharashtra, resides in urban slums, even though slums occupy only about 8.75% of the city’s land.<sup>2</sup> Of the approximately 12 million people in Mumbai, more than 6 million live in slums, approximately 1 million live on the pavement, and another 2 million live as tenants in rented places, many of which are old and dilapidated.<sup>3</sup> Population density is very high in the slums, averaging around 80,000 people per square kilometer, as compared to 20,000 people per square kilometer in Greater Mumbai.<sup>4</sup> According to recent estimates, the number of slum dwellings in Mumbai has grown 40% since 1995.<sup>5</sup>

Slums have increased in response to the lack of adequate housing and services.<sup>6</sup> The rise in slums has led policymakers in many developing countries to attempt to control rural-urban migration. In India, “[m]igration to cities was, and often still is, seen by the political leadership and intelligentsia as a threat to the survival of cities. To invest in urban development and to focus on housing for the urban poor appeared to them to be an invitation to fresh migration.”<sup>7</sup> The people living in slums “have clearly not found adequate jobs,” so the argument goes, “or they would not be living in such conditions.”<sup>8</sup> However, most economists and urban scholars believe that urbanization leads to advantageous social and economic development.<sup>9</sup>

### *Environmental and health impacts*

Slums are, by nature, densely populated places with high occupancy rates and poor public health conditions. In Mumbai, slum-dwellers generally have limited access to water and sanitation services, which results in a high prevalence of waterborne diseases.<sup>10</sup> According to the 2010 Millennium Development Goal statistics for India, 97% of all urban residents have access to improved drinking water sources, but only 30% have access to improved sanitation services.<sup>11</sup> However, these estimates are likely inflated due to problems with the definition of “improved,” which does not account for the quality, safety, or actual availability of services.<sup>12</sup> Moreover, not all slums have access to the same level of services. For example, a recently published study of a Mumbai slum called Kaula Bandar found that only 0.1% of residents have access to piped drinking water, only 3% have access to a private (that is, non-shared) toilet, and 14% practice open defecation.<sup>13</sup> Because this slum is located on central government land and is not “notified,” a term discussed below, its rates of access to water and sanitation are significantly worse than those of slums captured in government statistics.<sup>14</sup> In Mumbai, the city is only able to meet approximately 65% of demand for water, but even this is unevenly distributed and biased towards the rich.<sup>15</sup> Within informal settlements, water access also varies considerably, often reflecting business activities, which in turn reflects ethnic territories.<sup>16</sup> Moreover, due to the scarcity of available water in many slums, residents often create informal networks of water distribution, but due to the challenges of obtaining and transporting the water, the cost paid for the water is signifi-

cantly higher than that paid for municipal networked water.<sup>17</sup>

The disposal of human waste is also a major health and environmental challenge. Although approximately 90% of wastewater in Mumbai is collected, the vast majority is untreated and discharged through ocean outfalls or local waterways.<sup>18</sup> Most slum-dwellers rely on poorly maintained public toilets, which are often unhygienic and pose public health and environmental risks for the whole city. A 2001 study found that 63% of Mumbai’s informal population relied exclusively on public toilets, and the average ratio of persons per toilet seat was 81:1; some ratios were as high as 273:1.<sup>19</sup> Moreover, lack of access to sewer lines is linked to higher mortality rates and intestinal parasites.<sup>20</sup> Yet, due to the challenges of constructing sewer lines in slums, toilet blocks rely on aqua-privy systems or septic tanks that tend to clog or overflow because they are not cleared often enough. Many toilets are not connected to water lines, forcing communities to rely on more expensive sources of water, such as those brought in from tanker trucks. Many toilet blocks do not have electricity, and therefore go unused at night. As a result of the unhygienic conditions and long waiting times, which can be two hours or more in some communities, many people resort to relieving themselves outside.<sup>21</sup> Approximately 5% of slum-dwellers in Mumbai defecate in the open.<sup>22</sup>

Lack of access to water and sanitation disproportionately affects women, who often must wait until after they finish their household work to use the toilets, usually in the mid-morning.<sup>23</sup> One study found that some women preferred to go outside rather than use an unclean toilet; as a result, they waited until the cover of darkness and reduced the amount they eat and drink so as to minimize the need to go during the day.<sup>24</sup>

As unplanned housing created by the poor, urban slums are often situated in hazardous locations, such as on steep hills or river banks. In Mumbai, many are located in flood-prone tidal flats, mangrove swamps, garbage hills, cemeteries, and under high-tension power lines.<sup>25</sup> Climate change is likely to exacerbate the existing situation, with people living in coastal areas being more susceptible to extreme weather events such as tsunamis. The location of slums in low-lying areas that are susceptible to inundation makes it challenging to construct sanitation facilities that can contain waste effectively.<sup>26</sup> When the land

is marshy and uninhabitable, the poor who settle on it often use their own funds to fill in the land to make it habitable.<sup>27</sup> However, that reclaimed land then becomes vulnerable to claims by slum lords and higher-end real estate development.

The conditions in slums place residents at risk for a host of diseases. Crowding can lead to respiratory infections, meningitis, and asthma, and also promote the transmission of epidemic-prone infections like pertussis and group A *Streptococcus pyogenes* infections, which are associated with rheumatic heart disease.<sup>28</sup> Poor water quality is a leading global cause of morbidity and mortality, and a key way of spreading infectious diseases like cholera and hepatitis. Residents in Mumbai's slums regularly experience outbreaks of diarrheal diseases, leptospirosis, malaria, and dengue.<sup>29</sup> Monsoons exacerbate and complicate the course of these diseases.<sup>30</sup> For example, during the monsoons, Dharavi, a large slum in Mumbai, has been known to flood with "waist-high water containing raw sewage from the open drains."<sup>31</sup> Lack of access to safe water and sanitation also leads to higher rates of hepatitis A and E, which are usually spread through oral-fecal contact or the ingestion of contaminated food or water.<sup>32</sup> Skin diseases such as scabies are one of the leading morbidity causes for children and often result from unhygienic conditions and lack of personal hygiene.<sup>33</sup>

#### HUMAN RIGHT TO SAFE DRINKING WATER AND SANITATION

The lack of access to sufficient amounts of good quality affordable water and sanitation services in many Mumbai slums stands in sharp contrast to the ideals of a human right to safe drinking water and sanitation, which entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water and sanitation services for personal and domestic uses.<sup>34</sup> In 2010, India was one of 122 countries that voted to adopt UN General Assembly resolution 10967, which "recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights."<sup>35</sup> Several months later, the Human Rights Council Resolution affirmed in a unanimous resolution "that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human

dignity."<sup>36</sup> These resolutions followed Comment 15 from 2002, in which the Committee that is charged with interpreting the ICESCR determined that the right to water was inextricably related to the right to health (Article 12) and the rights to an adequate standard of living, adequate housing, and adequate food (Article 11).

In 1979, India acceded to the ICESCR, which requires that states use maximum available resources to ensure that all of the recognized rights are realized progressively and that states uphold the principle of non-discrimination. India is also a signatory to other international and regional instruments that recognize a right to water and sanitation, including the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination against Women, and the Delhi Declaration.

India's national jurisprudence also recognizes the right to water and sanitation. As a result of public interest litigation, India's Supreme Court has given broad interpretation to the "right to life" provision in Article 21 of its constitution, holding that it encompasses various socioeconomic guarantees.<sup>37</sup> For example, in a case brought by pavement dwellers who were being evicted, *Ahmedabad Municipal Corporation v. Navab Khan Gulab Khan*, the Supreme Court of India held that the "[r]ight to live guaranteed in any civilised [sic] society implies the right to food, water, decent environment, education, medical care and shelter."<sup>38</sup> It emphasized that "the right to shelter does not mean a mere right to a roof over one's head," but includes "adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc." Similarly, in *Subhash Kumar v. State of Bihar*, the Supreme Court of India held that "the right to live is a fundamental right under Article 21 of the constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."<sup>39</sup>

Despite such broad judicial pronouncement on human rights, scholars have observed that the actual substance of the rights under India's constitution is rather limited.<sup>40</sup> Khosla describes the Indian judicial approach as a "conditional social rights model," where the court "strives hard to emphasize the importance of socioeconomic guarantees" but does not "protect any systemic social right" and does not inquire into the reasonableness of the policy or whether a mini-

mum core of rights has been met.<sup>41</sup> For example, in the *Ahmedabad* case, the court allowed the evictions to proceed, but held that those who had squatted there for a considerable period of time could apply for certain government schemes; if they did not qualify, they did not have other recourse. More recent pavement dwellers, however, were not entitled to any remedy.<sup>42</sup> Indian constitutional law has also reflected a tension between the housing rights of informal settlements and the right to a clean environment. For example, middle class civil society groups have brought actions to evict slum-dwellers from open spaces, such as the Sanjay Gandhi National Park in Mumbai, on the grounds that they are polluting open spaces and damaging the ecology.<sup>43</sup>

This article considers the gap between international human rights obligations, India's own constitutional pronouncements, and the policies governing access to municipal water in the slums of Mumbai. In the case of the right to safe drinking water and sanitation, the duty to provide access to these critical basic services comes into conflict with laws and regulations in Mumbai that seek to discourage slum expansion. As the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation has noted, “[a]uthorities frequently resist allowing people with insecure tenure to connect to the water and sanitation networks because such connections can confer legal rights over the land that they occupy, and thus be seen to encourage the development of informal settlements.”<sup>44</sup> However, from a human rights perspective, water and sanitation should be provided regardless of underlying land tenure.<sup>45</sup>

#### LEGAL BARRIERS TO ACCESSING WATER IN MUMBAI SLUMS

This article focuses on the legal barriers that some slums face in obtaining municipal access to water, addressing disparities between slums.<sup>46</sup>

The relevant municipal regulation governing water access, including for sanitation, is the Municipal Corporation of Greater Mumbai Hydraulic Engineer's Office Water Charges Rules (effective from February 1, 2001, and rates revised from August 1, 2002), which are promulgated pursuant to the Mumbai Municipal Corporation Act, 1888. Subsection 6.9 states that “stand post connections on meter measurements shall be given to residential structures in slum areas, which have come into existence prior to 1-1-1995 or

any other date separately notified by Government of Maharashtra in this behalf” (emphasis added). This is reiterated in Appendix E, which sets forth the “conditions governing water supply to slum areas.” As a result of this rule, access to water in Mumbai slums generally depends on whether the slum dwelling was constructed prior to January 1, 1995, even if the dwelling was not considered legal when first built.<sup>47</sup> Some history of Mumbai slum redevelopment policy is required to place this 1995 cut-off rule in context.

#### *1995 cut-off rule and the evolution of slum redevelopment policy in Mumbai*

Slum policy in Mumbai has evolved over the last half-century. In the first two decades after India gained independence in 1947, the official policy towards slums in Mumbai was to clear the hutments and rehouse slum dwellers.<sup>48</sup> This proved to be an ineffective policy because people would simply rebuild their huts in the same, or nearby, locations. In the 1970s, slums began to be viewed as a possible housing solution, and a variety of slum redevelopment schemes were implemented over the decades.<sup>49</sup> For example, the 1970 Slum Improvement Program sought to improve infrastructure, including water supply through community taps, community latrines, roads, drainage, and street lights.<sup>51</sup> In 1971, the Maharashtra Slum Areas (Improvement, Clearance, and Redevelopment) Act (hereafter “Slum Areas Act”) was enacted in 1971 and has been amended several times to reflect changes in the law, including the 1995 cut-off rule.

Beginning in the mid-1980s, the state of Maharashtra began to support redevelopment strategy that relied more heavily on market-based mechanisms.<sup>52</sup> The goal was to redevelop slums by demolishing existing buildings and building cross-subsidized housing on the original site.<sup>53</sup> The scheme sought to provide private developers with incentives to develop slums by allotting them extra building space that can be sold on the open market, which is supposed to cross-subsidize the slum redevelopment.<sup>54</sup> It exists in a modified form today, and is codified in the Slum Areas Act.<sup>55</sup> A separate but related debate has also been taking place over the role of the private sector in the provision of basic services, such as water, in Mumbai.<sup>56</sup>

Over the last few decades, slum policy in Mumbai has become increasingly dominated by the politics of

“cut-off” policies that promise free housing to slum-dwellers who have been residing in slums prior to a particular date. Mumbai has historically used a date cut-off in an effort to prevent “opportunistic influx,” that is, movement into an area after a program is announced in order to take advantage of benefits.<sup>57</sup> For example, in 1976, the state allotted certain vacant land to slum dwellers while also conducting a slum census. It issued “photo passes,” which provided greater security of tenure for those residents, but also created a date cut-off for taking up residence in the slum.<sup>58</sup> Because the number of residents kept proliferating, the government repeatedly extended the eligibility, using electoral rolls instead of conducting additional censuses.<sup>59</sup> In general, cut-off rules are politically motivated; candidates court the votes of slum-dwellers by promising to recognize existing slums while simultaneously trying to limit the creation of new slums. While the cut-off policies increase the numbers of slums eligible for rehabilitation projects, they also heighten the likelihood of demolition for those that fall outside the cut-off date.

The current cut-off date of 1995 arose when the Shiv Sena-BJP government came to power on the promise of providing 800,000 free homes to 4 million slum dwellers in Mumbai who had been on the electoral rolls as of January 1, 1995.<sup>60</sup> However, this promise has gone largely unfulfilled; an audit conducted in 2010-2011 found that only 127,000 slum dwellings had been rehabilitated.<sup>61</sup> Nevertheless, the Slum Areas Act was amended in 2002 to reflect the 1995 cut-off date and it has important legal ramifications. A new chapter of the Act entitled “Protected Occupiers, Their Relocation and Rehabilitation” provides that all those residing in a slum prior to January 1, 1995 cannot be evicted if they are determined to be on the electoral lists as of that date.<sup>62</sup> If it becomes necessary “in the larger public interest” to evict the protected occupiers, the government is required to relocate and rehabilitate them through a designated Slum Rehabilitation Authority.<sup>63</sup> As a result, the homes of eligible residents cannot be demolished without their first being resettled. The details for the 1995 cut-off policy are also spelled out in the Development Control Regulations (DRC) promulgated under the Maharashtra Regional and Town Planning Act of 1966.<sup>64</sup> Slum-dwellers who can be considered “protected occupiers” under the Slum Areas Act have significant land security and are eligible for rehabilitation and also for basic services, like water.

While the 1995 cut-off rule has meant increased security of land tenure for slum-dwellers who meet the requirements, it has meant less security for those who do not. Between November 2004 and February 2005, the government enforced the January 1, 1995 cut-off date by demolishing between 50,000 and 90,000 slum dwellings.<sup>65</sup> The way that the demolitions were carried out caused serious outcry and also highlighted the inexact nature of cut-offs. Some of the residents whose homes were destroyed had lived in the slums prior to January 1, 1995. For example, scheduled caste members who had been resettled in a Mumbai slum known as Mankurd prior to 1995 had their homes demolished because they did not possess pre-1995 documents of proof.<sup>66</sup>

Since the 1995 cut-off rule went into effect, there have been numerous efforts to expand the cut-off date. The government agreed to later cut-off dates for some special projects, such as the major redevelopment project for Mumbai’s largest slum, the Dharavi Redevelopment Project, which has a January 1, 2000 cut-off date.<sup>67</sup> However, a 2006 Bombay High Court decision has prevented the state government from extending the cut-off date under the current legislation.<sup>68</sup> The state government has since brought a case before the Indian Supreme Court, which is still pending. It would seem more straightforward for the government to extend the cut-off date by amending the Slum Areas Act, but it is likely that this would be politically difficult to accomplish. Slum redevelopment policy is still a live issue in Mumbai politics, with proposals put forward to expand the 1995 cut-off date that would not run afoul of the current Bombay High Court decision.<sup>69</sup> At the end of 2011, the housing department was considering another proposal that would do away with the cut-off by granting families living in structures built after January 1, 1995 eligibility for affordable housing.<sup>70</sup> The proposal to eliminate cut-offs was being considered in part because it would enable Mumbai to apply for funding through the centrally sponsored Rajeev Awaas Yojana scheme, which disallows cut-offs.

The focus on expanding the 1995 cut-off rule, which is often tied to campaign promises of free housing for all, distracts from the critical need to develop affordable housing with basic services. Nevertheless, given the complexity of solving the housing crisis in Mumbai, one solution would be to disentangle water and sanitation provision from the larger questions of housing and land security.

### “NOTIFICATION” BEYOND THE 1995 CUT-OFF RULE

Although the 1995 cut-off rule looms large in Mumbai slum policy, a closer reading of the relevant laws and regulations suggests that access to water and sanitation could be expanded to slums created after January 1, 1995. As noted above, the municipal water regulations known as the Water Charges Rules state that connections will only be made to those slums that “have come into existence prior to 1-1-1995 or any other date separately notified by Government of Maharashtra in this behalf” (emphasis added). To understand what other slums might be “separately notified,” the municipal water regulations need to be interpreted in light of the Maharashtra Slum Areas Act.

Under the Slum Areas Act, the state government has the power to declare an area to be a slum by placing a notification in the *Official Gazette*.<sup>71</sup> The Act defines a slum as an area that lacks basic services, is unsanitary, squalid and overcrowded, is otherwise “unfit for human habitation,” or poses a “danger to the health, safety or convenience of the public in that area.”<sup>72</sup> Key criteria for determining whether a building is considered unfit for human habitation include the absence of a water supply, lack of drainage and sanitary conveniences, and/or a dearth of wastewater disposal facilities.<sup>73</sup>

Once an area is “notified” as a slum, it then becomes eligible for rehabilitation and improvement works through a Slum Rehabilitation Scheme.<sup>74</sup> Notably, being eligible for rehabilitation does not make the slum-dwellers “protected occupiers” with the same rights as those living in slums prior to the 1995 cut-off rule.<sup>75</sup> Since the 1995 cut-off rule went into effect, however, it is not clear if the government has taken steps to “notify” any newer slums. While the “notification” triggers eligibility for a full Slum Rehabilitation Scheme under state law, actually undergoing formal slum rehabilitation does not appear to be a prerequisite for access to water and sanitation. A reasonable interpretation of the municipal Water Charges Act suggests that the mere designation of a slum as “notified” could create eligibility for water “stand post connections,” even without a full rehabilitation scheme. This could have significant implications, because as of 2008, approximately 45% of slums in Maharashtra were considered to be “non-notified” in India’s National Sample Survey.<sup>76</sup>

Reading the Water Charges Rule together with the Slum Areas Act, it appears that the state government currently has power to expand the number of slums eligible for water services by using its authority under Section 4 of the Slum Areas Act to “notify” an area to be a slum, and thereby make it eligible for water services under the Water Charges Rules. Indeed, the very definition of slum indicates the need for water and sanitation services. Here, the argument is that the state and municipal governments already have the authority to expand access to water services; they just need to exercise their discretion. As a de facto matter, slum-dwellers who constructed dwellings after January 1, 1995 or who lack proof of residency may be denied services under the current interpretation of the law.<sup>77</sup>

While it may still be politically difficult to expand the number of “notified” slums, it is arguably easier from an advocacy standpoint to convince state and municipal officials to exercise the power they already have, rather than change the law. An argument could also be made that by failing to exercise this discretion, the government is in violation of its obligations to realize the human right to safe drinking water and sanitation.

### SLUMS LOCATED ON CENTRAL GOVERNMENT LAND

In addition to the challenges posed by the 1995 cut-off rule, slum-dwellers living on central government land face additional hurdles in accessing basic services like water. India is a federal country, and while states have the ability to frame their own laws and policies for slum upgrading, such laws do not apply to land held by the central government. The central government of India still has large land holdings in cities like Mumbai because of its colonial past. As of 2006, approximately 5% of slums in Mumbai are located on central government land; these slums are in many ways the most marginalized.<sup>78</sup> In a recent article, Subbaraman et al. highlight the barriers that residents in Kaula Bandar, a non-notified slum located on central government land in Mumbai, face in securing access to water and sanitation facilities.<sup>79</sup>

Since the 1970s, central government agencies have been reluctant to allow any form of slum redevelopment, including the extension of basic services, to slums located on their land.<sup>80</sup> In some instances, infrastructure upgrades require the land owner to

issue a “No Objection Certificate” to certify that the land is not earmarked for other development plans, and that it is possible to extend water and drainage facilities to the slum.<sup>81</sup> However, central government agencies, such as the airports and railways, as well as other organizations like the Mumbai Port Trust, are generally unwilling to provide these certificates. The Mumbai Urban Transport Project was a unique and isolated example of central government cooperation in a slum relocation scheme. In that instance, the central government was planning a major infrastructure project and agreed to relocate slum-dwellers living along the tracks as a result of pressure from the World Bank and civic organizations.<sup>82</sup> As Burra has observed, “There is a stalemate: politically, it is not possible to demolish the homes of thousands of slum dwellers who live on government land, but the central government departments that own the land refuse to allow the inhabitants to receive tenure and basic services.”<sup>83</sup>

The central government’s reluctance to allow basic services to be provided on land owned by its agencies appears to contradict the goals of national redevelopment schemes, such as the Jawaharlal Nehru National Urban Renewal Mission.<sup>84</sup> Although states are responsible for slum and urban development, the central government uses budget transfers to states to promote national policies. Notably, the Central Ministry of Urban Development and Poverty Alleviation had issued a draft national slum development policy about a decade ago, which would have made it easier for slum dwellers to obtain land tenure or to be resettled where tenure was not feasible.<sup>85</sup> However, the draft policy did not move forward because it was opposed by other central government departments that own land on which many informal settlements have been built.

The central government’s reticence to facilitate the provision of basic services like water and sanitation for slums located on their agencies’ land deserves scrutiny under international human rights law and also under Indian constitutional law.

#### **HUMAN RIGHTS CRITIQUE OF GOVERNMENT POLICIES**

Despite various policy schemes, most of Mumbai’s

slum residents neither have access to adequate quantities of safe, accessible, acceptable, and affordable water and sanitation services, nor have their rights to housing and health been fully realized. From a human rights perspective, the current laws and regulations that prevent water and sanitation services from being extended to slum-dwellers living in non-notified slums, including those on central government land, are problematic. The situation faced by slum-dwellers in Mumbai reveals the conflict between domestic law and the ideals of human rights norms. As discussed above, India’s Supreme Court has broadly interpreted the right to life provision of its constitution to include a right to water, sanitation, housing, and other socioeconomic rights. However, in resolving cases, it has deferred to government policies promulgated by the other branches of government, causing India’s approach to be described as a “conditional social rights model.”<sup>86</sup> Despite the constraints of the political process and judicial interpretation, this section briefly considers whether any arguments could be made to reconcile domestic and human rights law, and thereby expand access to water and sanitation services in non-notified slums.

With respect to the expansion of services to non-notified slums that are not located on central government land, the 1995 cut-off rule is an arbitrary line that arguably violates the principle of non-discrimination. This article suggests that the municipal water regulations and the Slum Areas Act could be interpreted in a way to avoid a conflict with the human right to safe drinking water and sanitation. To achieve this, the state government must exercise its authority to “notify” additional slums under the Slum Areas Act. Doing so would then expand eligibility for water services under the municipal Water Charges Rules.

With respect to slums located on central government land in Mumbai, it could be argued that by preventing sub-national actors from extending basic services that are essential for life, the Indian central government is in violation of its own constitutional obligations as well. By actively preventing the state of Maharashtra and/or the city of Mumbai from providing access to basic services such as water and sanitation services to slum-dwellers living on land owned by central

government agencies, India is arguably in violation of its obligations to respect its human rights obligations. Under human rights law, states have three key obligations, often known as the “protect, respect, and fulfill” typology.<sup>87</sup> Here, it could be argued that India is not adhering to its duty under Article 2 to ensure that maximum available resources are being used to progressively realize the rights recognized in the ICESCR. In other words, the central government has not respected the human right to water and sanitation because it is interfering with existing schemes by the state of Maharashtra and the city of Mumbai that would otherwise allow the upgrading of slums and the provision of services to move forward.

While it could be asserted that the central government has not fulfilled its obligations, an argument based on failure to respect is in many ways an easier one to make because it requires recognition of a negative, rather than a positive, right. The case law also suggests that the courts are more likely to enforce negative rights. Of course, this is not to say that the policies of the state of Maharashtra or the city of Mumbai are perfect, only that the central government’s actions appear to be at odds with India’s human rights obligations. The situation presented is in some ways an odd one, because under international law, nation-states are the duty-bearers. Yet in this case, the actions of the sub-national actors, that is, the state of Maharashtra and the city of Mumbai, shed light on the feasibility of India’s ability to progressively realize human rights recognized in the ICESCR.

In light of this jurisprudence, a case brought under India’s constitution asserting that the central government has an obligation to recognize the slums located on central government land and provide them with water and sanitation services would likely not go far. However, the court may be more open to an argument that the central government is interfering with a fundamental right that would otherwise be fulfilled by a state government scheme, and often with funds provided by a central government program. In other words, by framing the issue as a negative right and by providing deference to existing state policies, a challenge could be brought against the central government that might survive the “conditional rights”

approach of the court. The invocation of a fundamental right under the “right to life” provision of India’s Constitution may be sufficient to overcome the presumption that state law in India does not apply to slums located on central government land. Moreover, the central government’s increasing decentralization of urban development policies to the city and state level, which is often accomplished through various funding schemes, may also support an argument for increased central government deference to state and municipal slum rehabilitation policy.<sup>88,89</sup>

## CONCLUSION

In order to realize the human right to water and sanitation in the slums of Mumbai, the government needs to separate questions of basic service provision from underlying questions of land security. By definition, slums have poor access to water and sanitation services and are considered unfit for human habitation. Yet not all slums in Mumbai are equal. Slum dwellers living on state or municipal land who meet the requirements of the 1995 cut-off rule have the greatest security, while those living in non-notified slums on central government land generally have the least. This in turn impacts their access to water and sanitation services.

Non-notified slums on central government land are in the worst position with respect to water and sanitation. The central government’s reluctance to improve conditions of these slums contradicts the goals of their own poverty alleviation schemes. By often refusing to allow the state and municipal governments to provide basic services to slum communities located on central government land, India is arguably in violation of its obligations to progressively realize the human right to water and sanitation under international human rights law, as well as its obligations under the right to life provisions of the Indian constitution. In effect, realizing the human right to water and sanitation in Mumbai slums requires disentangling the provision of these vital basic services from the more complex questions of land security and land ownership.

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