

# Living Under The Shadow Of Judicial Urbanism

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IN THE PUBLIC'S INTEREST: EVICTIONS, CITIZENSHIP AND INEQUALITY IN CONTEMPORARY DELHI

By Gautam Bhan

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In urban areas like Delhi, the poor face an acute problem of space for their survival. Most of them are compelled to live with the tag of 'encroacher' and face a perpetual threat of eviction from their 'residence'. The book under review presents a meticulous ethnographic study of the lives of those citizens of Delhi who were living 'illegally' and faced eviction due to the emergence of 'judicial urbanism'. The book explores the complex aspects related to urban planning, changing nature of Public Interest Litigations (PILs) and definitions of *public interest*, evictions and relocation/resettlement of different 'illegal' *bastis*, social movements in *bastis* and their strategies to counter the evictions etc., in Delhi. In other words, it focuses on the dilemma of the marginalized sections of citizens and their social movements regarding the judicialization of urban governance because they cannot deal with judiciary with the same strategies as they have been dealing with their elected representatives and the government officials. Judicial pronouncements in many cases led to the evictions and the most tragic part is that evicted families not only lost their 'homes' and social milieu but most of them were never relocated/resettled by the State. For instance, between February and April 2004 *Purbta* or (Yamuna) riverbank *bastis* were demolished by Court order and many families were relocated in the north-western periphery of New Delhi, Bawana. However, 'only 30 per cent evicted households received any form of resettlement or rehabilitation' (p. 1).

Gautam Bhan, argues that '*bastis* are the territorialization of survival practices of income poor residents across the cities of the (Global) South' (p. 234). These poor people have to negotiate at each aspect with a range of actors including the law and the state and they are forced to live with persistent poverty and exclusion from the 'mainstream' of the city. In Indian urban studies, there has been a tendency to focus on the role of the executive, impact of neo-liberal turn, good governance and the functioning of local governments, but there has been insufficient analysis of the role of judiciary in urban governance. Indeed, Bhan argues, to understand the complete picture of different complex layers of urban life in India a thorough analysis of 'judicial activism' is imperative. He uses *judicial urbanism* to describe the many changes which have occurred in urban governance due to active intervention by the judiciary through PILs. For Bhan, *judicial urbanism* is a mode of urbanization where the production of space, social struggle over the meaning of space and possibilities of urban citizenship are determined in a judicial register, which produces and recognizes the following aspects: (a) governmental rationalities, (b) techniques and modes of political engagement and (c) form of personhood and subjectivity that draw from the logic of law (p. 248). By using all of them it governs the urban life and makes a huge impact, particularly on the lives of poor in the urban areas. It seems that at least in the last two decades the Court, especially in the PILs related to urban problems, has been working with the idea that Government and representative and electoral politics are responsible for the 'encroachment' in the city and the erasure of *basti* is an 'act of "good governance", of order and of

public interest' (p. 23). This pattern of the Court's pronouncements has played a crucial role in the emergence of judicial urbanism.

The PILs, however, also played an important role in making justice accessible to poor citizens. It emerged in the late 1970s as a tool to protect the fundamental rights of marginalized sections and to ensure the efficient working of the executive and it also expanded many fundamental rights, particularly the Right to Life given in the Article 21 of the Constitution. Evaluating the role of PILs in the 1980s and early 1990s, Upendra Baxi described this period as the 'redemocratizing processes of governance and the practices of politics' (p. 112). However, in the case of Delhi the scene changed with the *Industries Case* of 1996, where the Court made it clear that the right to livelihood was secondary to the right to fresh air and live in a pollution-free environment. And then in many cases the Court focused on making Delhi a world class city rather than ensuring the right to life, livelihood and humane residence to marginalized sections of the society. The Court orders resulted in a series of evictions between 2003 and 2010, which reduced the total number of *bastis* in Delhi. It is important that in normal times the government provides, even though insufficiently, all kind of necessary facilities like school, primary health centre, electricity to these *bastis*. There has been a trend to regularize many such *bastis* by the ruling party just before elections to grab votes from these areas, which could be underlined as a positive effect of vote politics. The judicial orders, however, put a full stop on all such mechanics of the 'politics of governed' and evictions of *bastis* in Delhi are the best example of this phenomenon. Interestingly this inversion of PIL also happened in the case of forest dwelling communities, where the Supreme Court passed an order in 2002 in Godavarman case, which resulted in the brutal evictions of thousands of forest dwelling communities in different parts of the country.

Bhan presents a historical understanding of the emergence of different 'illegal' *bastis* in Delhi and argues that rather than providing poor people affordable homes, the urban administration has been indulging in the creation of a space for 'planned illegality'. Interestingly, Bhan informs that 'only 23.7 percent of the city lives in what are called "planned colonies"' (p. 19). Obviously, the so called 'illegality' of residence is not related to poor residents of *bastis* only, but the illegal housing of middle and upper middle class is also part of it. The 'sheer inadequacy in housing stock...and inability of many households to wait for allocations of housing stock made by Delhi Development Authority (DDA)' (p. 63) have been two important reasons for the emergence of 'unauthorized colonies'. Indeed due to their low income poor people have not been able to afford good homes, so they live in the pitiful condition of *bastis*.

The book evaluates the political activities of the residents and activists of the *bastis* and tries to probe the impact of the active role of judiciary on the evictions of these *bastis* on the resistance. It is important to note that James Holston argues that in the cities of the South, from the peripheries of cities, residents organize movements of insurgent citizenship to confront the entrenched regimes of citizenship inequalities (p. 31). It is true about Indian cities too, though

the emergence of judicial activism against 'encroachment' put pressures on the resistance movement. In this context, Bhan focuses on the need of judicialization of resistance i.e., change in the nature of resistance to face the hostile nature of an active judiciary. In this regard he gives three suggestions to urban social movements: first, they must claim the city and not just the *basti*; second, they must challenge the foundation of their exclusion: notions of property, and the value of land and the use public land; third, the movement should challenge judicialization of politics and for this purpose they should focus on the legislative power of the Executive and Parliament (pp. 250-52). Indeed tribal and other forest dwelling communities have successfully put serious pressure on the political class to enact better

laws for them and the *Forest Rights Act 2006* is an important example of their success. Indeed in many areas tribal activists got the decree of law to fight the cases against tribals in the Court.

It is important to note that though Bhan has not presented any detailed critical evaluation of Chatterjee's framework, he has shown that an 'encroacher', living with spatial illegality, cannot possess what Chatterjee calls, 'the moral connotation of sharing in the sovereignty of the state' that is implied within the citizenship (p. 29). Indeed 'judicial urbanism' is a serious challenge to the idea that political society and fulfill its need by its mobilization. Delhi High Court's decision related to the eviction of *bastis* sealed the fate of Yamuna riverbank *bastis* of Delhi.

Though the book is theoretically rich and presents a profound ethnographic analysis of both the lived experiences of people and the Court cases, there are some aspects which should have been focused on in detail: first, throughout the book *bastis* have been presented as a monolithic category. Is there any relationship between

evictions and the composition of the population of a *basti*? Are the experiences of evicted populations the same? In the conclusion the author has underlined that urban social movements are divided on the basis of caste and religion and there is need to develop an 'interaction as well as intersection' (p. 251) across these claims and the city offers a possibility for this. There is, however, need to analyse this aspect more closely. Second, though he presents the idea of 'Hawa' (trend) within the Court in the direction of a particular kind of thinking, and he quotes Jawahar Raja to describe the definition of 'Hawa', 'the *hawa* of the Court is the sense you get of what the political climate of the Court is...' (p. 39), the author has not presented the reason behind the changing nature and role of PILs and judicial activism, particularly in the urban areas. Third, there is no systematic analysis of the relationship between the people living in *bastis* and their representatives (MPs, MLAs or the representative in Nagar Nigam).

However, through his innovative conception of judicial urbanism the author has underlined the unprecedented intervention by the judiciary in the different aspects of urban life and its negative impact on their existence in a 'world class city'.

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