

Evictions and due process in Delhi

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Abstract

In the absence of an enforceable substantive right to housing, communities living in slums and other informal settlements have mobilized over the years, using both courts and political advocacy to try and protect themselves from eviction. This has resulted in a series of judgments, policies, and some legislation, relying on Constitutional provisions and India's commitments under international law, extending at least some procedural safeguards (and limited substantive rights) to these communities. This brief documents these processes and provisions in the National Capital Territory of Delhi.

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Introduction

The absence of an enforceable substantive right to adequate housing guaranteed by law¹ leaves informal workers in Indian cities – often comprising the urban poor and migrant labour – at the receiving end. Priced out of the housing market, they turn to informal settlements, often slums located on vacant public land. Through a combination of constant negotiation, bureaucratic indifference, political mobilisation and occasional State support, they are able to live without hindrance, often for several years.² But what happens when the State needs the land? Or when other, usually wealthy, residents of the neighbourhood, complain? From the State's perspective, such persons who have no title to the land they occupy, would be considered "encroachers". In the absence of specific legal protection, they would be liable to be evicted or displaced without payment of any compensation, thus negating the years of effort they have put into making the land habitable, and often destroying lives and livelihoods overnight. Indeed, this has more often than not been the reality.

However, over the years, communities have mobilised to use both courts and political advocacy to make themselves seen and their contributions to the city recognised. This has resulted in a series of judicial pronouncements and executive policies, relying on Constitutional provisions and India's commitments under international law, extending at least some procedural safeguards (and limited substantive rights) to communities living in informal settlements and facing the threat of eviction. This brief documents this process in the National Capital Territory of Delhi, where attempts by informal workers to occupy space and build communities in the city's slums have continued in defiance of the State's repeated attempts to evict them, and the tension between the two has been a regular feature of city-building since Independence.

A brief history of slums and evictions in Delhi

The inadequate provision of affordable housing in Delhi's Master Plans, coupled with a failure of the Delhi Development Authority (DDA) to meet even these limited targets,³ resulted in a large number of people being forced to find housing in informal settlements, often on public land.⁴ State response was initially in terms of slum clearance drives, especially during the Emergency in the mid-1970s. These drives lacked any semblance of due process, without even notice in many cases, leave alone rehabilitation.

Subsequently, some attempts at rehabilitation were made, with evictees being relocated to new plotted colonies on the outskirts of the city. These plots, which progressively decreased in size from the 1970s to the 1990s, were allocated on a leasehold basis and the provision of infrastructure was either non-existent or poor and often delayed:⁵ a situation that continued till the 2000s, when the government began providing built-up flats in lieu of plots under the then newly-notified 2021 Master Plan.

In 1989-90, the Union Government, through the Delhi Administration, carried out a comprehensive survey of the slums in Delhi and each household was issued a token rendering them eligible for rehabilitation. Called "VP Singh tokens", these served as proof of the settlement having been surveyed.⁶ The cut-off date for eligibility was extended to 31.01.1990 and later 30.11.1998.

These interventions, to whatever extent they were effective, confined themselves to the substantive aspects of rehabilitation, such as eligibility, and did not address procedural issues around the evictions themselves. Moreover, requirements of surveys and engagement with the community remained vague. During these periods, the responsibility for management of slums in Delhi fell initially on the Municipal Corporation of Delhi, subsequently

1. Some countries, like South Africa and Kenya, have a right to housing enshrined in their Constitutions, while others like Canada have legislative mandates for access to housing. In India, the courts have read a limited right to housing into Article 21 of the Constitution, which guarantees the right to life. A limited substantive right has also emerged from housing schemes by the union and state governments, which are usually targeted at residents of slums or those living in housing conditions deemed to be inadequate. However, this is restricted to those found eligible under the respective scheme's criteria.

2. See, for instance, Solomon Benjamin, *Occupancy Urbanism: Radicalising Politics and Economy beyond Policy and Programs*, 32(3) *International Journal of Urban and Regional Research* (2008), pp. 719–729.

3. For a detailed account, see Shahana Sheikh & Ben Mandelkern, *The Delhi Development Authority: Accumulation without Development*, A report of the Cities of Delhi project, CPR (December 2014).

4. Further context for Delhi's housing and planning issues is provided in Gautam Bhan, *Planned Illegality: Housing and the 'Failure' of Planning in Delhi 1947-2010*, 48(24) *Economic and Political Weekly* (2013), pp. 58 – 70.

5. See, Shahana Sheikh, Subhadra Banda, and Ben Mandelkern, *Planning the Slum: JJC Resettlement in Delhi and the Case of Savda Ghevra*. A report of the Cities of Delhi project, CPR (August 2014).

6. D. Asher Ghertner, *Calculating without numbers: aesthetic governmentality in Delhi's slums*, 39(2) *Economy and Society* (2010), pp. 185–217.

Box 1: International law on evictions

The United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement, issued in 2007, are in furtherance of the Universal Declaration of Human Rights, 1948, and the International Covenant on Economic, Social and Cultural Rights, 1966, which recognise a right to adequate housing for all individuals. Over the years, however, infrastructure development and other projects have caused a number of people to be evicted from their homes to free up land required for such projects. The Guidelines recognise that forced evictions are a violation to the right of adequate housing, and cause distress and displacement to individuals and communities evicted, and thus prescribe a set of essential principles to avoid or mitigate these consequences.

Substantively, the Guidelines prescribe compensation and rehabilitation with an aim to ensure minimal disruption of lives and livelihoods and that living conditions are not worsened by the eviction. Procedurally, they seek to ensure three elements: (a) inclusion, or that all displaced individuals are eligible for rehabilitation; (b) natural justice, or that affected individuals receive notice and a hearing before the eviction; and (c) redressal, or that administrative or judicial remedies are available to all aggrieved individuals. They are also universal in their applicability, meaning that all individuals have a right to them, and the onus is on the State to harmonize its processes to make this possible.

on the Delhi Development Authority (DDA), and then switched back and forth between these two institutions.

Sudama Singh: the first modern articulation of universal due process

In the late 2000s, a series of evictions were carried out for projects that were being built in preparation for the Commonwealth Games that were to be held the following year. Some of the affected residents filed a case before the Delhi High Court alleging that the government had acted arbitrarily and without following due process. The Court passed a judgment in 2010, in what came to be known as the *Sudama Singh* case,⁷ where it, relying on domestic and international law (See Box 1), concluded that the Government was Constitutionally obligated to provide alternate housing to all eligible evictees in line with existing policy. Significantly, it mandated a survey and meaningful consultation with residents of any settlement that was sought to be evicted,

regardless of its legal status, and provision of rehabilitation, including basic civic amenities at the rehabilitation site, before eviction.

The same year, the Delhi Urban Shelter Improvement Board (DUSIB), a statutory body under the Government of the National Capital Territory of Delhi (GNCTD),⁸ was set up as a nodal agency to coordinate rehabilitation of *jhuggi-jhopri* bastis.⁹ The DUSIB Act, 2010 is the first legislative enactment to provide for resettlement of slum households who are subject to eviction. It stipulates a settlement-wise cut-off date (originally 2002, extended to 2006 by an amendment): i.e. to qualify for resettlement, a basti has to be notified by DUSIB as being in existence as on 01.01.2006. The DUSIB has issued two such notifications: the first with a list of 675 bastis, and a second with 82 additional bastis.¹⁰ These two lists comprise the entirety of the 757 bastis in Delhi whose residents are eligible for rehabilitation.

7. *Sudama Singh v. GNCTD*, WP(C) 8904/2009, judgment dated 11.02.2010.

8. For a history of DUSIB's establishment, see, Shahana Sheikh & Subhadra Banda, *The Delhi Urban Shelter Improvement Board (DUSIB): The Challenges Facing a Strong, Progressive Agency*, a report of the Cities of Delhi project, CPR (May 2014)

9. Jhuggi Jhopri Bastis, also known as Jhuggi Jhopri Clusters (JJC)s, are informal settlements that are located (usually) on public land, and have no formal legal rights or security of tenure. They are legally defined under section 2(g) of the DUSIB Act as a group of jhuggis that is (i) unfit for human habitation; (ii) detrimental to safety, health or hygiene on account of reason of dilapidation, overcrowding, faulty arrangement and design of such jhuggis, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors; and (iii) inhabited at least by fifty households as existing on 01.01.2006. *Jhuggi* and *Jhopri* are Hindi words for hutments. *Basti* is a Hindi word meaning settlement.

10. The first and second lists are respectively available on DUSIB's website at https://delhishelterboard.in/main/wp-content/uploads/2017/01/jjc_list_for_website.pdf and http://delhishelterboard.in/main/wp-content/uploads/2017/02/List_of_additional_jj_bastis.pdf (accessed on 01.04.2022).

Box 2: Delhi's complex governance and land ownership

Delhi, on account of its status as the national capital, has an unusual governance framework as a Union Territory with a legislature. Governance is fragmented between the Union Government and the GNCTD under the Government of the National Capital Territory of Delhi Act, 1991, and the various municipal bodies. These matters have been complicated by a 2018 judgment of the Supreme Court, and a 2021 Amendment to the GNCTD Act, which governs the division of power between these agencies.

Ownership of land is also similarly split between these levels of government and their agencies. The largest land owner in the city is the DDA, under the Central Government, which also holds a monopoly over planning and at various points has also been in charge of slum development. At present, over 50% of the bastis in the city are located on land managed by the DDA.

The DUSIB Policy

In 2015, the GNCTD proposed a new "Slum and Jhuggi Jhopri Relocation and Rehabilitation policy" under section 10 of the DUSIB Act, which extended the cut-off date for individual households to 01.01.2015. Thus, there are two dates that a household must satisfy to be eligible for rehabilitation: it must live in a basti which existed before 2006, and must have lived there since before 2015. Existence of the basti is determined by reference to the lists mentioned earlier,¹¹ and residence cut-off for an individual family is determined by at least one adult member's name being on an electoral roll in 2015 or one of the prior years. The 2015 policy expanded on the framework in Sudama Singh and codified the requirements for in-situ rehabilitation, survey and rehabilitation prior to eviction. The policy was approved and notified by the Union Government in 2017.¹²

The many actors and legal frameworks of eviction Issues with eviction and rehabilitation in Delhi are further complicated by the fact that land in Delhi is owned by a multiplicity of agencies split across three levels of government – Union, State and municipal (**See Box 2**).¹³ Settlements on different lands are therefore governed by a multiplicity of legislative instruments that all threaten them with eviction in different ways. **Table 1** on the following page

provides an overview of these different laws and the procedural requirements under each of them, in the context of the UN Guidelines discussed earlier. The requirements under various laws vary widely with some providing no opportunity of hearing at all to the affected party, while others provide for hearing as well as a right to appeal. In addition, the DDA also adopted a policy in 2019 for in-situ rehabilitation of bastis on its land,¹⁴ which follows the same eligibility criteria and process as the 2015 DUSIB policy but a different model of rehabilitation similar to that followed by the Slum Rehabilitation Authority (SRA) in Mumbai.¹⁵ In practice, the fact that different agencies claim that basti residents have different procedural and substantive rights, results in a lack of clarity about which will apply. Land ownership itself is not always very clear, resulting in further ambiguity.

Ajay Maken: resolving the differences

These procedural ambiguities around eviction, as well as the conflict between different agencies, came to the fore during an eviction that took place in Shakurbasti in West Delhi in December 2015. The eviction was carried out on railway land (belonging to the Union Government) during the middle of winter, without any prior survey or rehabilitation being carried out. Some of the affected families and local politicians filed a petition in the Delhi

11. Or by proving the existence of the basti before 2006 in any other manner – for example, to show that someone in the basti has identification documents from prior to 2006 – but in practice DUSIB relies on the lists.

12. The final version of the DUSIB Policy can be viewed on DUSIB's website: <https://delhishelterboard.in/main/wp-content/uploads/2019/01/Relocation-Policy-2015.pdf> (accessed on 15.04.2022).

13. Based on *Categorisation of Settlement in Delhi*, CPR Policy Brief (May 2015); and Sheikh & Mandelkern (2014), *supra* note 3. For a comment on the Supreme Court judgment, see Alok Prasanna Kumar, *Statehood for Delhi: A Legitimate Demand*, 53(28) Economic and Political Weekly (2018), pp. 12–14.

14. The final DDA policy can be viewed on DDA's website: http://119.226.139.196/tendernotices_docs/march15/Final%20insitu%20Policy18012019.pdf (accessed on 11.01.2022).

15. The SRA is a statutory body set up by the Government of Maharashtra for managing slum rehabilitation. The model functions through redeveloping slums and housing their occupants in multi-story flats, whose cost is subsidised by commercially exploiting a part of the land. For more, see <https://sra.gov.in/page/innerpage/about-us.php> (accessed on 15.04.2022).

Table 1: Processes for eviction/rehabilitation under various laws and policies

Legal instrument	Applicable to	Eligibility for rehabilitation	Notice/hearing before eviction/rehabilitation	Opportunity to appeal
UN Guidelines, 2007	Development-based involuntary displacement of individuals or communities	Right to resettlement for all displaced individuals and communities	Paragraphs 38-41 stipulate consultation and public participation prior to an eviction, in particular issue of notice in writing, and hearing with legal representation. Paragraph 44 requires resettlement to be completed prior to the eviction.	Administrative and judicial review of all decisions mandated by Paragraph 41.
DUSIB Act, 2010 + Policy, 2015 + Protocol, 2016	JJ bastis notified under section 2(g) of the DUSIB Act, 2010	JJ bastis in existence before 01.01.2006 and jhuggis in existence before 01.01.2015 are entitled to rehabilitation.	Survey and eligibility determination to be carried out prior to rehabilitation, two months' notice to be provided prior to shifting.	Appellate Authority to hear cases of those declared ineligible.
DDA Policy, 2019	JJ bastis located on DDA and Central Government land in Delhi	Same as above	Survey and eligibility determination to be carried out prior to rehabilitation, consent of all eligible residents to be obtained through forming a society, transit accommodation/rental housing to be provided prior to shifting.	Appellate Authority appointed by DDA to hear grievances.
Delhi HC decision in Sudama Singh, 2010	Jhuggi dwellers occupying public land (other than those covered under the 2015 policy above).	Survey to be conducted to determine persons eligible for rehabilitation.	Mandates a survey, "meaningful consultation" with residents prior to eviction, and rehabilitation if eligible under extant policy.	No
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013	Persons owning or occupying land which is acquired by the State for a public purpose	Affected families are entitled to rehabilitation even if they have no title over the land.	Chapters III & IV mandate a social impact assessment and issue of notice prior to acquisition. Section 38 requires the rehabilitation and resettlement process to be completed prior to displacement.	Reference to LARR Authority under section 64, followed by an appeal to the High Court under section 74.
Public Premises (Eviction of Unauthorised Occupants) Act, 1971	Unauthorised occupiers of "public premises" (in Delhi, land or buildings belonging to the Central or State governments, DDA, MCD, DMRC, any public university or PSU)	Eviction without rehabilitation.	Section 4 requires that notice to show cause within seven days be given to unauthorised occupiers prior to eviction, with a hearing if necessary. Section 5 subsequently requires an order of eviction to provide 15 days' notice.	Appeal against order of eviction to the District Court under section 9.
MCD Act, 1957	Buildings that are: constructed without sanction (s. 343), dangerous (s. 348), unfit for human habitation (s. 368)	Demolition without rehabilitation, discretionary payment of compensation under section 450.	Sections 441-444 require that notices must be issued in writing, under the signature of the Commissioner, and specify a "reasonable time" for showing cause or compliance.	Appellate Tribunal under section 347A to hear appeals from any person aggrieved by an order of demolition.

Legal instrument	Applicable to	Eligibility for rehabilitation	Notice/hearing before eviction/rehabilitation	Opportunity to appeal
DDA Act, 1957	Any development that has been carried out in contravention of the master plan or zonal development plan or without the required permission, approval or sanction.	Demolition without rehabilitation.	Section 30 requires that orders of demolition provide 5-15 days of notice. A notice to show cause within 7-30 days has to be given before making an order of demolition, under the DDA (Removal of Objectionable Developments) Rules, 1975, and a hearing has to be provided.	Appellate Tribunal under MCD Act to hear appeals from any person aggrieved by an order of demolition.
Railways Act, 1989	"Soft encroachment" (temporary structures) on railway land. For "hard encroachment" (permanent/ long term), the provisions of the Public Premises Act, 1971 are used (see above).	Demolition without rehabilitation.	Survey by the Section Engineer under paragraphs 813-814 of the Railways Works Manual, eviction, demolition and criminal prosecution by railway staff under section 147 of the Railways Act.	No
Wakf Act, 1995	Encroachment on any land, building, space or other property which is waqf property.	Eviction without rehabilitation.	Section 54 requires the CEO of the Wakf Board to issue a show cause notice to the alleged encroacher and consider objections. Subsequently an application is to be made by the CEO to the Tribunal which can issue an eviction order after hearing, if necessary. The encroacher is supposed to comply with the order of eviction within 45 days after which force can be used.	No
Ancient Monuments and Archaeological Sites and Remains Act, 1958	Occupiers (including owners) of any building within the protected, prohibited or regulated area around a protected monument.	Demolition without rehabilitation, discretionary payment of compensation under sections 27 and 28.	Section 19 empowers the Central Government to issue demolition orders. An order for demolition of an unauthorised building, or one constructed in violation of norms, can be issued to the owner or occupier under Rule 38 of the Ancient Monuments Rules, 1959. No notice or hearing is contemplated.	No

High Court seeking protection, arguing that the eviction violated both existing legal requirements (the 2015 policy) and previous precedent from the Court (*Sudama Singh*). The Court accepted the plea, stayed the eviction, and granted interim relief to the evicted families in terms of a right to stay at the site while the case was being heard, along with provision of basic amenities by the Government. During the hearing, it also directed DUSIB to develop

a Standard Operating Procedure to be followed while carrying out evictions, which DUSIB notified as a Protocol in 2017.¹⁶ The Protocol addresses many gaps in the policy, and provides that evictions shall not be carried out during examination and adverse weather conditions. Further, the survey and eligibility determination processes, and allocation of alternative accommodation, are to be completed prior to carrying out an eviction.

16. The protocol can be viewed on DUSIB's website: <https://delhishelterboard.in/main/wp-content/uploads/2012/01/Protocol-1.pdf> (accessed on 15.04.2022).

In 2019, the High Court pronounced its judgment in the Shakurbasti case.¹⁷ The Railways had argued that the 2015 policy was inapplicable to it on account of being a Union government agency governed by a separate legislation, the Railways Act. The Court rejected this plea and held that the 2015 policy applied to all public land in Delhi irrespective of the owner, and that DUSIB was to be mandatorily consulted as a nodal agency before any eviction was carried out. Drawing on provisions of the Constitution and international law, the Court recognised that all residents of the city were entitled to justice and due process, independent of the legal status of their housing and other aspects of their lives. The Court invoked principles of social justice and dignity – as articulated by Henri Lefebvre in his “Right to the City” – and held that the DUSIB Act and the 2015 Policy would apply to all notified JJs; other cases would be subjected to the procedure in *Sudama Singh*. It further took note of the Protocol developed by DUSIB and directed all land owning agencies in Delhi to comply with it, procedurally and financially.

The situation today: is everybody protected?

The 2015 Policy, on account of the judgment in *Ajay Maken*, extends to all 757 bastis on the lists notified by DUSIB under the 2010 Act, irrespective of the agency in charge of the land. However, there are still settlements in Delhi that do not find a place on these lists. What happens to them? The Court in *Ajay Maken* clarified that in respect of individuals who were not covered by the 2015 Policy, the directions in *Sudama Singh* would still hold, thus guaranteeing a minimum of procedural safeguards for all residents of bastis even if they are not in a notified basti or have settled there after the 2015 cut-off date. Coupled with the remaining observations in respect of the Railways, and the 2019 policy adopted by DDA, it may be said that most jhuggi-dwellers in Delhi today have some procedural safeguards against eviction.

On the other hand, five years later, the residents of Shakurbasti continue to live in squalid conditions, with the ever looming threat of eviction hanging over their heads. No attempt has yet been made to

rehabilitate them, and the procedural safeguards guaranteed by the Delhi High Court is all they live on. In 2020, they were under threat yet again – this time from a Supreme Court order which directed the eviction of all settlements along railway lines in Delhi.¹⁸ Then, the years of efforts and advocacy at establishing due process paid off, and the Union Government submitted to the Court that no action would be taken pending a survey of all the settlements and arrangements for their rehabilitation.¹⁹ However, this case also illustrated the limitations of procedural safeguards, raising thorny substantive questions regarding the quality of rehabilitation measures and the disruption that any resettlement was likely to cause.²⁰

The process of “cleansing” Delhi of slums is likely to continue in light of government programmes that continue the vision of the world-class city, such as the smart cities mission and the large-scale redevelopment of government lands in the city. Recent judicial efforts in the name of environmental protection: relocating slums located by railway lines and evicting those dwelling in the vicinity of the Yamuna River; also pose threats to a large number of communities. Slums that stand in the way of planned infrastructure are also vulnerable. In this ever shifting landscape, courts are likely to be the theatre where this drama unfolds on a daily basis.

Conclusion

Due process is particularly important to marginalised groups such as slum dwellers because it provides a legal foothold in their treacherous terrain of their everyday existence. It is their first claim on equal citizenship, to be surveyed, counted and recognised as residents of the city, protected by its laws and processes. And it forms the basis for a larger conversation on planning and development paradigms, about how clarity in law can go beyond providing immediate protection and recourse, to shape a more humane urban policy that is inclusive of all residents of the city. Efforts such as the citizen-led Main Bhi Dilli campaign’s advocacy around the Master Plan for Delhi 2041 seek to invoke this conversation.

17. *Ajay Maken v. GNCTD*, WPC 11616/2015, judgment dated 18.03.2019 (Delhi High Court).

18. *MC Mehta v. Union of India*, WPC 13029/1985, order dated 31.08.2020 (Supreme Court of India). For an analysis and critiques of the order, see, Manish, *The unfairness of the Supreme Court order on slum evictions along railway tracks in Delhi: an explainer*, India Housing Report (September 2020), <https://indiahousingreport.in/outputs/opinion/the-unfairness-of-the-supreme-court-order-on-slum-evictions-along-railway-tracks-in-delhi-an-explainer/>; Annie Banerji, *Court order to clear Delhi’s railway slums will cause ‘great distress’*, activists warn, Reuters (September 2020), <https://www.reuters.com/article/us-india-court-landrights-idUSKBN25V1XU> (all accessed on 16.04.2022).

19. *MC Mehta v. Union of India*, WPC 13029/1985, order dated 14.09.2020 (Supreme Court of India).

20. See, for instance, Mukta Naik and Swati Janu, *Saving Bastis*, The Indian Express (October 2020), <https://indianexpress.com/article/opinion/saving-bastis-delhi-government-ji-cluster-6722188/>; Ritwika Mishra, *‘Resettling has to be a smooth transition’: Delhi slum dwellers worry about outcome of SC order*, The New Indian Express (October 2020), <https://www.newindianexpress.com/thesundaystandard/2020/oct/25/resettling-has-to-be-a-smooth-transition-delhi-slum-dwellers-worry-about-outcome-of-sc-order-2214716.html> (all accessed on 16.04.2022).

The UN guidelines lay down useful principles and practices for minimising the damage and disruption that evictions cause to communities. They are especially important in the context of newer schemes such as the PMAY, which favours in-situ slum redevelopment to provide housing to the urban poor.²¹ It is important to remember that every redevelopment will involve an eviction. When, as in the case of Delhi, a multitude of government agencies own and administer the land, due process becomes critical to ensuring that the communities residing there are not caught in the crossfire. The provisions of the DUSIB and DDA policies, read together with the Court orders on their application in the *Sudama Singh* and *Ajay Maken* cases, create a strong rights-based framework that can support the rights of these communities in making and securing their claim on the city.

However, given the inconsistent application of these provisions, courts continue to be the refuge for communities facing evictions both for immediate relief (in the form of stay orders) and for inclusion in rehabilitation schemes (demands for surveys and allotment). Collectives like the Delhi Housing Rights Task Force work daily to assist communities residing in slums with litigation and advocacy. However, these litigations not only cost these communities dearly in terms of time and resources, but also pose delays to projects. Hence, adherence to due process is necessary not just for protecting the

rights of citizens, but also to expedite resolution of land matters. This will only be possible through more convergence, when all authorities rely on DUSIB as the nodal agency for carrying out slum rehabilitation, in terms of the DUSIB Act and as reiterated by the Delhi High Court in *Ajay Maken*.

Finally, it is important to note that procedural safeguards can only go so far in the absence of a substantive right to housing. Indeed, courts are far more willing to provide procedural protections, as it is easier than defining the substantive aspects of a right to housing, which is a policy matter. Even where policy defines a substantive entitlement to rehabilitation, communities' ability to access it is massively hamstrung by bureaucratic adherence to cut-off dates and eligibility criteria that lean towards exclusion rather than inclusion. In Kathputli Colony, where the DDA attempted to rehabilitate residents through a redevelopment project, it took nine years, two cut-off dates and several rounds of surveying to prepare a final eligibility list. Even then, many residents were excluded and the transit arrangements pending the redevelopment were far from satisfactory.²² While a discussion of this is beyond the scope of this brief, it is important for movements to use the gains from procedure to push more strongly for a substantive right to housing. Such a right – even if legislated by the Delhi Government – would remove many of the legal gaps and bureaucratic deficiencies that urban poor communities in the city have to face today.

21. This is despite the fact that PMAY itself has an alternative option in the form of the beneficiary led construction model, where residents are given cash handouts to build their own houses, which been popular throughout the country. This option, which offers a much less disruptive method of improving slum housing, would require tenure regularisation of the land on which slums are located. Some states like Odisha have enacted legislation to regularise slum land, and converged state programmes such as the JAGA mission with PMAY to carry out infrastructural and tenure improvements to slums without having to evict them.

22. Veronique Dupont, *Transient and differentiated resettlement: The case of Kathputli Colony, Delhi*, India Housing Report (April 2021), <https://indiahousingreport.in/outputs/opinion/transient-and-differentiated-resettlement-the-case-of-kathputli-colony-delhi/> (accessed on 11.01.2022)

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