

Homelessness, Judicial Response, and Politics of Exclusion in Mumbai: 1980 to 2020

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DOCTOR OF PHILOSOPHY IN POLITICAL SCIENCE

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March 2023

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Introduction

Why is this discussion Important?

Gomti and Meena are unforgettable¹. They are both of similar height and built, in their late fifties or early sixties – always on the go and alert. As one enters the Female Section of the Beggars' Home² these two are the first ones you notice sitting on the first barrack to your right. The barrack is filled with over 50 women who are aging, disabled or have been detained for more than two years in the Beggars' Home by the Court. Gomti and Meena have been in the home for over thirty years. They came in as young women, abandoned by their families and through trials of their own ending up in the Beggars' Home 'for rehabilitation and training,' as the law states, but got neither. Instead, they continue to live inside, as convicts, because it gives them a roof to sleep, food to eat and safety from the horrors of living in the city as a homeless woman. Meena is also the in charge of the barrack, who reports on whatever happens to the beggars' home officials in-charge. She has lost both her legs, and uses a crutch for getting around. Gomti is mute. She is the kitchen in-charge. They both have become permanent residents of the Beggars' Home and like some other women, will spend the rest of their lives inside. Why can they not be released? This question has a rather simple answer. They do not want to be. Every time the women's release date comes closer, the report provided to the Court states that they are unfit to live in the outside world and will end up begging on the streets. The Court detains them for another few years. This has been the case for the last three decades, not just for them, but for hundreds of women (and men) with nowhere to go. They are the lucky ones.

On the other hand, there are Padma and Param, two young women in their twenties, with similar stories to tell. Both escaped their families in Telangana and Punjab respectively, due to histories of abuse and started working as labour and domestic help in the cities. While life on the streets was not kind to them, they figured out mechanisms to cope and survive. In the wake of being arrested, both did not want to remain in the Beggars' Home, since they had jobs, they had a place to go back to on the pavement, and most of all, they aspired. The Court however, would not release them due to lack of documents that proved their identities or the presence of a family, friend or employer who would testify for them, stating they were not in fact, beggars. Their annual Court ordered detention and the stigma of criminalization had cost them their livelihood and self-esteem pushing the limits of their vulnerabilities to a point, where they doubted if they can start a normal life after being released, even if on the streets. They did not receive any form of rehabilitation or vocational training as required by

¹ All interviews done and observations made between 2012 to 2019 in the Beggar's Home and outside, referring to stories of Gomti, Meena, Padma and Param. Pseudonyms used to protect the identity of the women.

² The Beggar's Home in Chembur stood on a 28 acres property until 2016-2017, when the land was auctioned by the State authority to builders for building commercial spaces. The Beggars' Home was moved behind the commercial and residential colony and now stands hidden in a cramped one-acre space with hundreds of people detained in much smaller rooms stacked one above the other, on three floors.

the Bombay Prevention of Begging Act 1959 (BPBA 1959)³. In every case, the orders for detention did not come from institutions of the executive, i.e., urban authorities or the State or Central government – but from the Court. ‘I did not know there was an accusation against me for begging and that I have been arrested for something I have never done,’ said one of the detained women. The arrests and the detentions were a result of the orders of the Mumbai Magistrate Court in Kurla.

The matter of wrongful arrests under the law have been addressed and discussed at large in various Public Interest Litigations (PIL; PILs in plural)⁴. The “PIL is a judicial instrument, initiated by the Courts in the 1970s with an objective of protecting fundamental rights of the poor people in the country.” Its purpose was to “enable the poor and vulnerable groups and individuals to access justice in the highest Courts of the country by easing the legal procedures and rules.” Through PILs, the Supreme Court of India aimed to become, ‘the last resort for the bewildered and oppressed’⁵, who could approach the Court to protect the infringement of their constitutionally guaranteed fundamental rights. In some of the PILs, the Supreme Court also considered hand written letters written to them as a petition and investigated and collected evidence to prepare arguments for the petitions. During the 1980s, PILs were site for the expansion of fundamental rights of the poor, which Upendra Baxi calls, “re-democratizing of the processes of governance and the practice of politics” (Baxi 1997, 351). PILs were filling the democratic vacuum, the Court came to be viewed as a site where – “the right to life (Article 21), equality (Article 14), anti-discrimination (Article 15) and freedom of expression (Article 19)” – were re-construed and extended for novel enforcements.

In 2009, before the Commonwealth Games in Delhi, India’s capital, there were ten mobile Courts formed by the State government authorities for detention of beggars and clean the city⁶. The city had 12 zero tolerance zones with 13 teams going around to make Delhi beggar free, a click bait term, for pleasing the middle and upper middle classes, while sending the urban homeless and poor back to their native villages and eviction and demolition of their homes⁷. The PIL, filed by Harsh Mandar and others v. Union of India, termed processes of arrests and criminalisation⁸ of urban poor unconstitutional and creation of a top-notch city exclusionary⁹. Mumbai is no different, the beggary

³ Discussed in detail in Chapter 2 and 3.

⁴ The related PILs are discussed in Chapters 2 and 3 in detail.

⁵ Justice Beg in *State of Rajasthan and Others v. Union of India* 1977 AIR 1361.

⁶ The Social Welfare Ministry set up the mobile Courts with the aim of making Delhi beggars free. Read here - <https://frontline.thehindu.com/social-issues/article30180950.ece>. Accessed on 9 April 2018.

⁷ See full report here - https://www.hlrn.org.in/documents/Planned_Dispossession.pdf

⁸ Criminalisation here means penalising the urban poor by classifying their means of livelihood into a criminal offence, therefore making it illegal and the poor criminal in the books of law and administration.

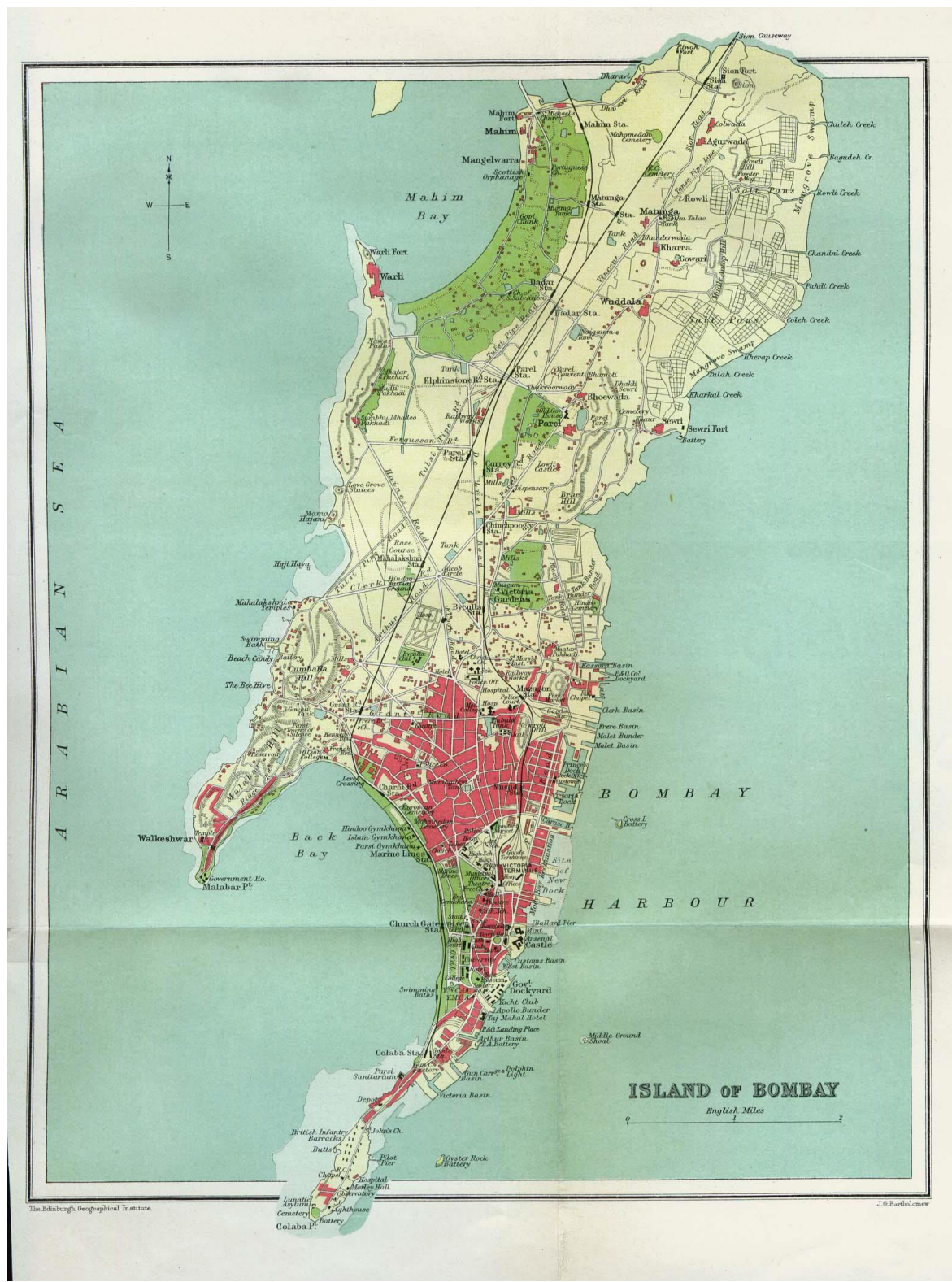
⁹ Harsh Mandar and Ors v. Union of India and Ors CWP 10498 of 2009.

squads, the mobile courts and the regular detentions are a part of the problematic urban management fostering exclusion and vulnerabilities of the urban poor in a legally legitimate manner. While the Commonwealth games made the exclusion unambiguous and visible, the process has been on prior to and after the games across cities where the BPBA 1959 has been implemented. The urban clearance policy has been delinked from any kind of rehabilitation and resettlement or provision of an alternative housing for the urban homeless. The Courts have ruled that, “growth of urban land has failed due to haphazard planning policies. Anybody can sit where they want, squatting gives right to allotment of the land and the policy is defeated.” In the same ruling, while supporting that, “it is the obligation of the government to provide housing for the needy”, the judges ruled that, “deficiency of planning cannot be substituted by an arbitrary system of providing housing at different sites and land to encroachers on public land in the city¹⁰.”

Gomti, Meena, Padma and Param are also data points and therefore, one needs to tell this story another way. Between 1900 and 2020, various events have led to demolitions, evictions, arrests, and detentions in Mumbai of the urban homeless and poor. Largest perhaps being during “the Emergency in 1975-77” in India, when fundamental rights were deferred and political dissent was censored or punished. Mumbai is a city that has been marked by frequent and repeated instances of destruction of homes and arrests of homeless and its poorest residents. Unlike arrests during the Emergency, present day arrests have been a part of democratic processes rather than their absence.

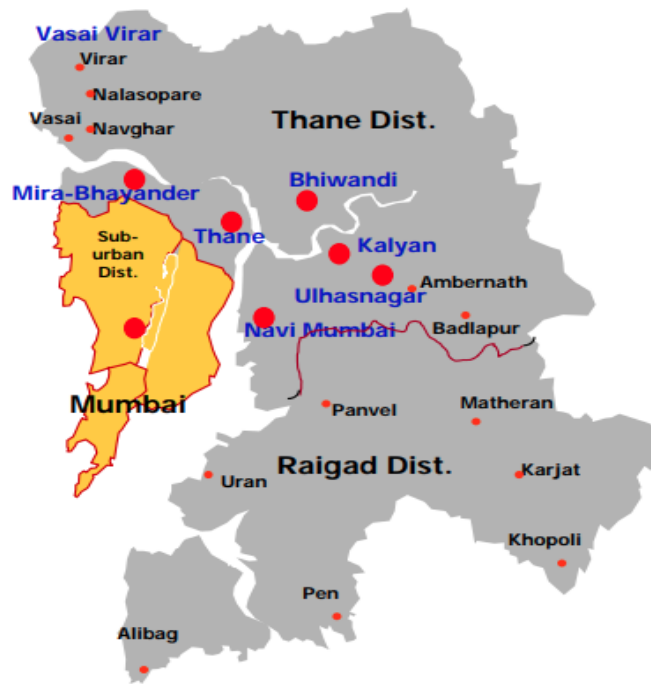
The expansion of Bombay from seven islands to reclaimed land spreading to its South, East and North in a span of five decades, the increasing in-migration to the city and the constant inability of the Governments to deliver basic amenities to people has been the grand design of the city and life in it. The following maps present a visual story of Bombay’s expansion in the decades leading to the 21st century, and can be useful references for the discussions presented in the next chapters on Mumbai city, its history and expansion.

¹⁰ “Wazirpur Barta Nirmata Sangh v. Union of India CWP 2112 of 2002.”



Islands of Bombay 1909

Source: The Edinburgh Geographical Institute; <https://www.mapsof.net/bombay/island-of-bombay-1909?image=full>



MMRDA Region 2020

Source: www.mmrda.gov.in/aboutmmr and www.mapsofindia.com

Who are the Urban Homeless?

At its simplest, the Urban Homeless is a person living in the city without a Home or address. At best, “a homeless person could build a house of what are considered temporary or *kutcha* (raw) materials like bamboo, plastic, thatch or tarpaulin sheets by the pavement or open spaces next to the railway lines, parks, or markets.” The Census of India defines homeless population as, “persons who are not living in census houses. A census house is referred to a structure with a roof with the Census enumerators asked to take note of the likely places where the homeless population will possibly live such as roadsides, pavements, hume pipes, near temples, masjids, platforms as such¹¹.” They are also termed as “houseless, roofless, shelter less people”. There is a lack of a universally agreed definition of homeless and homelessness. This allows policy makers and governments to forget about the homeless people, living in cities with no shelter, social security but their cheap labour (Speak and Tipple 2006, 173).

The Census in 2011 counted “1.94 million homeless people in India out of which .80 million lived in cities and towns”. These numbers could be underestimates for several reasons – one, the urban homeless is a highly invisible group which makes them a difficult group to work with. Two, even if

¹¹ Census of India 1991, 64.

they have lived in the city for generations, they do not have a validated address and are non-existent according to the basic requirements of the rule of citizenship – like ration cards or voter’s identity card. Finally, the organisations that run projects for the urban poor tend to oversee the homeless while working within slums or street vendors.

A research report on the “social, economic and health status of the urban homeless in Delhi”, Chennai, Madurai, and Patna in 2009¹² revealed that life on the streets is synonymous to living at the edge, being physically brutalised, denial of basic public services, lack of healthy food and added illegality and criminalisation by the State and livelihood sources that remain exploitative, and without dignity. The India Urban Poverty report¹³ presents several accounts of hunger, scarcity, and exclusion of the homeless in every city in India. In addition, stereotypes associated with the urban homeless include – labelling them as beggars, criminals, encroachers, etc. A PIL ¹⁴in a letter dated 13/1/2010 and 25/1/2010 brought the “denial of right to food and shelter of people living on the streets of Delhi and Mumbai” respectively, for redressal in the Supreme Court. While the Supreme Court outlined a series of programs for constructing night shelters and directed the Government to implement these, the absence of a monitoring structure has kept the urban homeless deprived and vulnerable.

Master plans and local, state, and national laws variously consider the urban homeless as illegal or encroachers because they live in spaces by violating the planning rules and standards by occupying public or private land without legal ownership. In Mumbai, partly due to the reclamation of land, almost all the spaces used by the homeless are public land¹⁵. The homeless is always associated with encroachment of public land and therefore, it also becomes a matter of housing and giving shelter within the public interest realm. Padma was aware that she did not own the space she lived in. She did feel like she had a claim to it. It was by the Azad Maidan near Churchgate Station made from plastic sheets and cardboard by the pavement walls. The homeless occupy land out of need and right, implying the State’s failure to provide for them.

¹² Mander, Harsh, et al. “Living Rough: Surviving City Streets – a Study of homeless populations in Delhi, Chennai Patna and Madurai. Centre for Equity Studies.” 2009. http://planningcommission.nic.in/reports/sereport/ser/ser_rough.pdf.

¹³ UNDP. India Urban Poverty Report 2009. Read here:

https://www.undp.org/content/dam/india/docs/india_urban_poverty_report_2009_related.pdf. Accessed on 15 June 2016.

¹⁴ WP 196 of 2010.

¹⁵ From the Back Bay Reclamations in 1860 until 2021, thousands of acres of land have been reclaimed by the government in the city. Including them into the plan would be required for urban expansion. Every Master Plan from 1960 to 2034, has had aims of acquisition of reclaiming land, to enable state control over land.

These claims are also “claims to development”. The development ideology, Partha Chatterjee argues, “a constituent aspect of self-definition in the post-colonial state. The State’s claim to legitimate rule in the post-independence years was not just electoral representation but also promises of development, specifically economic development of the nation, which was how the State rose from within colonialism” (Chatterjee 1997, 277). The city has risen from its ambiguity in the politics of the nation to representing the promise of development, particularly for its poorest residents. While the slum dwellers have been able to achieve to some extent access to services like electricity, housing, water, schools – and the ability to exist on paper – a feat extremely difficult for the urban poor, the urban homeless largely have yet to build a paper trail of their existence.

The urban homeless are therefore not just a “number that estimates the quality of housing, a spatial form, or a planning category. They must be viewed as a political group which engages and negotiates their presence in the city as well as their right to the city.” This engagement is a complex mix of claims that draw upon rights and needs both, often involving “the law and practices of planning” and at times also takes the form of resistance. For instance, urban social movements resisting evictions or arrests and pursuing legitimacy for the urban homeless to maintain “state-citizen relations” like the right to food or right to vote. The urban homeless “construct and add meaning to urban space through symbolic and discursive practices, by telling their narrative of the city and their homes within it”. The criminalisation of the homeless marks the transformation of this political engagement. Within the determination of the public interest, “arrests and criminalisation represent an urban politics where references of development, governance, citizens, exclusion, and the public – are redefined to see it as an act of good governance and planning. They represent a break in the patterns of urban living for the poor in Mumbai as well as of the claims that underlie the negotiated spaces in the city, and a shift in the negotiations of citizenship.” They make visible the exclusion and inequality in the city.

Read like this, criminalisation allows us to understand the central concern of this dissertation – the politics of exclusion in the city and the “negotiations of citizenship and resistance” that are basic to it. At stake in studying the criminalisation is the need to understand the emerging forms of politics and ask what they tell us about India’s Urban story in present times of social, political, and economic transformation. This dissertation does so by focusing on the Judiciary as a site of this politics. The role of the judiciary is critical as a site contributing to the production of urban inequality – a body with its own institutional processes and reasonings. “The judiciary as a site of politics marks the expansion of the jurisdiction of the Courts as well as the realm of law in urban politics. As the Court’s authority widens, a series of questions and debates within urban politics are articulated and addressed

within the framework of law.” These frameworks shape the city just as they are shaped by it. They impact the production of urban space as they navigate from the Court to the city via media reports or orders or judgements and become an Archive of the City, shaping the landscapes of social struggles of space and citizenship (Sundaram 2009).

Ensuing its specific focus with the politics of exclusion, and citizenship, this dissertation follows the judicial role in transforming urban politics on one tangent – it presents how legal sense is made of criminalisation and arrest within the PILs. To do so, there are four key frameworks within the urban politics each of which forms the main chapters of the dissertation, emerging from over 20 PILs in the “Bombay High Court and Supreme Court of India” resulting in different impacts on the urban poor in Mumbai – from demolitions and evictions, to arrests and detentions. These frameworks are – i) Spatial Illegalities, ii) Crisis of Development iii) Erasing Vulnerabilities iv) Negotiating Resistance. I discuss these briefly below.

The Politics of Exclusion - Key Frameworks

- Spatial Illegalities

M S Gore¹⁶ argued in the 1970s that urban planning would be a success only when cities are viewed as positive contributions in development. By the late 1970s and early 1980s, dominant ideas of planning were dismissed with cities being recognized as the future becoming a possibility (Bapat 1983, 403). Sen (1976) describes Indian cities as ‘unintended’¹⁷, a space that garnered informality as opposed to claims of order and control by the planners and government; and Nandy (1998) understood the city as a space for multiple realities that refuted the dominant narratives of urban development. Bombay¹⁸ perfectly fits the description of being an ‘unintended’ city despite being a metaphor for Modern India. While the crisis of planning had become the commonly accepted narrative in the 1990s, the chaos in Bombay’s development, as described by Patel (1997, 824), was a result of ‘hopelessly inadequate planning’ that is meaningless without implementation.

The very process of readjustments and expansion of Bombay is questioned today as the city seems to be transforming again. In such a case, where would the urban poor be placed? Cities change over

¹⁶ Gore, Madhav Sadashiv. 1975. Social Development and a Strategy for Urbanisation: Absence of a Positive Approach to Urbanisation. *Economic and Political Weekly*, 10(4): 110-119.

¹⁷ For essay, see Sen, Jai. “The Unintended City.” <https://www.india-seminar.com/2001/500/500%20jai%20sen.htm>.

¹⁸ Bombay comprises of two districts, Greater Mumbai and Mumbai Sub-urban. The focus of this study is Greater Mumbai and its geographical limits; any reference to Bombay/Mumbai henceforth will mean Greater Bombay/Mumbai. The sub-urban district and neighbouring districts of Thane and Raigad, and cities like Navi Mumbai that comprise the Mumbai Metropolitan Region are referred contextually when understanding the growth of the city beyond the boundaries of present-day Greater Mumbai.

time, changing their role as they do so. The city is evolving, but it also contains remnants from earlier eras as part of its load and character. These artefacts serve as reminders of the city's implicit purpose and provide important hints about the places' first days and the reason behind their creation. These problems raise the same query: What is the function of a city? Building a city is much simpler since it is an act of hope. The goal is to maintain an existing city by continually revitalizing and energizing it. Both imagination and political determination are needed for this. Identifying the nature and future of an urban phenomena that is always evolving.

In urban theory, informality has been seen “as a domain of survival by the poor and marginalized sections (Roy 2008, 2).” In this process, “the urban poor is reduced to a slum, a demographic form, a spatial aspect of the informal group that has risen from decades of structural adjustments (Davis 2006, 28).” Roy (2005) argues that “urban informality is in fact not just a bounded space but a type of governance – a tool for the State to determine what kinds of informality can survive and what must fade (Roy 2005, 182).” Arrests and the criminalization of the urban homeless challenge the narrative of both the production and imagination of space. In the first chapter I argue that it is through the illegalities produced due to planning that the production of space in Mumbai and other cities in India needs to be understood. I do it by creating a historical narrative of the expansion of Mumbai to locate the homeless amidst the larger politics of housing and reclamation of the city.

I use the starting point as 1888, the year of establishment of the Brihanmumbai Municipal Corporation to track the decades of change until 2020. Though it cannot be an extensive statistical or descriptive presentation of the history of the city, it has both empirical and archival data that can be used to represent and understand the evolution of the urban space in Mumbai. Using a tool like Google Maps to view present day Mumbai city, one can observe that a very small percentage of the city lives in planned housing colonies. From the first Master plan that authorized legal status to these spaces until the third, the history of legality of space is related to the three Master Plans. I use space to assess how people are categorized – their definitions, exclusions, and everyday life – a result of planning and planned development.

I draw conclusions showing that if the urban dysfunctions are caused by a section of informal inhabitants, then this must also include not just the urban poor but also the “illegal housing produced by the middle and upper middle classes.” Illegal housing does remain the major “means of production of shelter in the city”. The reductionist tendency to blame the poor for the urban chaos within planning and governance, has led to the political role of, in David Harvey’s words, “counter revolution, of not

only asking the wrong question but preventing the real questions from being asked (Harvey 1973).” I therefore ask – “if illegality is the main mode of production of urban housing, what are the implications of this illegality when used by different sets of urban actors?” This lets us analyse urban politics and framing of urban residents as illegal with respect to others. The negotiations of citizenship define the relationship between the legal and the illegal. How is legality gained or lost by the urban citizens? Through what kinds of claims, mechanisms, and strategies?

Further I also show how planning itself causes and controls illegality in urban spaces. I present how urban planning decides which dwellings will be legal or not, which will remain or be demolished, who will be free or detained. Spatial illegality therefore is a part of the planning process – a mode of governance. When the Court comes into the picture, this illegality which is produced by the State, takes a judicial form based on categories of the plan and its legal position. What the Court translates from the plan and the planning processes, is the focus of the next chapter.

- *Crisis of Planning and Development*

In the second chapter I locate the debates on judicial governance between 1980s to 2020. I argue that the criminalisation of the homeless and the urban poor in general makes the judiciary a site through which one can assess the role of the judiciary in attempting to govern the city. The new reasons create a changed understanding of the city, of the public, of poverty and the homeless, and of governance by introducing and highlighting ideas of encroachment, planning and development, law and order and crisis. These ideas are constructed based on a specific understanding of the city, marked by the failure of what the judiciary calls ‘planning and development.’

A set of questions will lead us to the interrogation: In the law on beggary, how is ‘illegality’ understood by the State and its machinery? How do we understand spatial exclusion with respect to the interventions by the Court in matters of the city and in governance? The city as a site of crises becomes the context for construction of judicial rationalities caused by failed planning, like the courts understand it.

Using petitions and cases on demolitions, arrests, evictions, the chapter presents how the urban crisis is framed as a failure of planned development and therefore a matter of public interest. The Court defines this failure through the penalizing of encroachment of land – the unauthorized land use and the violation of laws. The selective reading by the judiciary of what encroachment means, is what makes them “gaps to be filled and violations that must be undone.” Usha Ramanathan argues, “the

practices that the law has fostered are directly related to the powerlessness of the poor, as well as those who bear a likeness to the destitute. She argues that the pervasiveness of abuse, the casual disregard of individual circumstances, the acceptance of the death of the destitute person – is a symptom and consequence of the way law constructs the urban poor as status offenders (Ramanathan 2008, 42).” When the Court argues that “the failure of planned development through encroachments has created a chaotic situation in the city, it defines the poor as a shorthand of what Vyjayanthi Rao (2006) calls the distortion of urban substance – everything that is not planned, not in order and therefore not legitimate or apt to remain in the city (Rao 2006, 231).” The problem that the urban homeless represents then shifts – it is not representing their vulnerabilities, poverty, or the government’s inability to deliver its promise of building adequate housing for the homeless. The lives of the homeless are reduced to their location in the city, the zone they occupy in the planning and the color of that zone in the Master Plan – all of which align to erase their presence in the city and consequently define good governance, in the public interest.

The inability of the government to administer the city and protect it from encroachments, as described by the Court, is another factor contributing to the city's predicament (and encroachers). In order to justify its participation in the city and its efforts to hold the government and its officials to their authority, the Court might use this crack to present itself as a potent urban player. The Court's characterization of a weak, dishonest, and unreliable government further frames the submission as inevitable. This change is a marked departure from the PILs, in which the Courts “held the Government accountable for failing to perform its duties but constrained their own powers” to identifying this failure. Redressals were the government's responsibility.

“This urban crisis legitimizes judicial interventions and the need to address these multiple failures and restore order becomes the primary meaning of public interest and what Nikolas Rose terms the moral form of judicial rationality (Rose 1999).” This makes judicial intervention and law itself a means of restoring order in a crisis laden city. Even when the courts see themselves as legitimate actors to intervene in the city, what is the basis on which the Court decides what to do? What is Planned Development then meant to be? Rose argues that “it is necessary to render visible the space over which government is to be exercised, in order to be able to govern (Rose 1999, 36).” Activities of mapping, scaling, producing multiple types of images are consequently acts of spatializing government. The three Bombay Development Plans (DP) — 1967-1981, 1991-2001, and 2014-2034 — are a precise portrayal of the city used by the Court in the numerous petitions on urban poverty. These were referred to as the legal position of the plan by the courts, which begs the question: How

can the court utilize a document issued by government authorities who are accused of failing to provide justification as the legal position of the plans? What then is the legal situation?

The city is created and bound by the Plan in its capacity as a governable space. The city's complicated nature is reduced to a clear binary of conformance with the Plan or divergence from the Plan by its categories of land use and ownership, allocations, and ownership. It therefore becomes the framework of the legal and illegal instead of the legitimate. It is what James Scott (1998) calls, “a simplification, a synoptic view that uses a narrow field to impart a logic on reality as it is observed. Scott argues that this simplification ignores differences that might be relevant to understand a complex but poorly understood set of relationships and processes to a single data point (Scott 1998, 77).” The Court's interpretation of the Plan reduces it to the two-dimensional geographic arrangement it symbolizes for dividing up land use. The Court's participation in the city is now only justified by the Plan. It becomes the standard for how the city must be run in order to get out of the current situation. Inside the Court, an ordinary land use plan becomes that mark of a spatial, social, and political urban order that needs to be reached. Not only does the Plan's execution serve as the method of governance, but it also serves to define what the term “public interest” implies. While it does so, it affects not just governance but also citizenship and right-related beliefs and behavior's, which is the subject of the third framework.

- ***Erasing Vulnerabilities***

“Since the 18th century”, James Holston and Arjun Appadurai have argued, “two concepts have been the defining mark of modernity and in the realizing full membership in society – citizenship and nationality (Holston and Appadurai 1996, 187).” The nation which promises freedom, equal rights, security, and development is a specific form of the modern State that has been the dominant site of citizenship, where, Chatterjee argues, “the universal ideals of modern citizenship were expected to be realized (Chatterjee 2004, 30).” Within democratic nation-states in particular, the identity of the citizen is meant to supersede all others – this universality is seen as a crucial aspect of democratization. It is also what “allows citizenship to bear the possibility of a politics of equality and justice.” Nivedita Menon (1998) argues that “the three aspects of citizenship, rights and justice are intertwined in the context of a modern democracy. The citizen, minus any other layers or identities, carries the potential of justice through the winning, granting and protection of rights because this singular identity allows the individual to be part of a modern public space as a right-bearing citizen (Menon 1998, 3).”

While centrally concerned with questions of equality and inequality and exclusion of the urban poor, this dissertation shifts the locus of citizenship from nation to the city. Holston argues that “cities, not the nation, are privileged sites for considering renegotiations of citizenship and that membership of the nation-state is not a sufficient condition for substantive citizenship (Holston 1999, 168).” He argues that “citizenship as a means of organizing society has always been both subversive and reactionary, inclusionary and exclusionary, a project of equalization and one of maintaining inequality (Holston 2008, 21).” Holston and Appadurai argue that “in many post-colonial societies, a new generation has risen to create urban cultures severed from the colonial memories and nationalist fictions on which independence and subsequent rule were founded (Holston and Appadurai 1999, 3).” Appadurai, in writing about the 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).

The third chapter in this dissertation thus asks – How are the claims to housing and city understood and responded within the Court? What are the discourses that the PILs articulated in the Court and which led to rulings legitimizing demolitions, evictions, arrests and more despite rights-claims? Upendra Baxi has argued that “poverty and poor are passive words that invisibilise the processes that produce poverty (Baxi 1988).” Gautam Bhan (2014) draws on this to state the necessity to take impoverishment seriously to understand the “claims to right to and in the city by the poor.” He argues that “it is impoverishment that enable the poor to be evicted in the name of public interest just as poverty is reproduced through it (Bhan 2014).” In this chapter (chapter three) I discuss two processes – one that has led to the poor being categorized as encroachers in the city that binds their identity to a spatial illegality and basis for denying rights. And two, the erasure of the vulnerabilities of the urban homeless through the discourses within and outside the Court.

In petitions and rulings on eviction, the courts refer to encroachments as well as encroachers – a person responsible for the act of occupying public land. The term encroacher, Ramanathan (2004) argues, is loaded with illegality. It reduces the personhood and identity of the poor to just one – of spatial illegality. “As an identity, ‘encroacher’ performs the same function as citizen. It supersedes other claims and sites of belonging and becomes the primary and only identity of the poor (Ramanathan 2004).” As the embodiment of “illegality, the encroacher therefore becomes unworthy of right.” It is this construction of the encroacher that enables the reproduction of inequality and forms a basis for differentiated citizenship where officially equal citizens can publicly and legally be treated

unequally. The relationship between democracy, citizenship and inequality is a constitutive aspect of urbanism in Indian cities which makes understanding their implications for the city and the production of space within it even more important.

The citizen, encroacher and encroachment are “produced and reproduced” within the Court and the city, “institutionalised in court rulings in the name of public interest and made evident in new imaginations of the urban structures”, in the advent of novel regimes of poverty and in the institutional policies on citizen participation. Urban India is seeing a wider shift in the politics of poverty, and the incapacity of poverty to serve as a foundation for political claims to rights, freedoms, and citizenship itself. What all these processes do is the erasure of vulnerabilities of the urban poor and displace them from the imaginations of development that the welfare state promised. This altered representation of the poor, in addition to erasing their vulnerabilities, also legitimizes their criminalization and disavowal of rights.

- *Negotiating Resistance*

The final framework and chapter of this dissertation shifts its focus to the homeless and activists in urban social movements in Mumbai who face or deal with arrests and other processes of authority. It asks how the urban social movements respond and resist arrests, demolitions, and evictions? It presents the sites and forms of struggles and strategies employed to claim rights or resources for relief. It also asks how the presence of the Court in the process in ordering detentions affects their negotiations and contestations.

This framework takes from what Zerah et al (2012) describe “as rights in the city – a reformist view on the right to the city that argues that some rights can only be obtained by engaging with the institutions of the State (Zerah et al 2012, 2).” “The Right to the city” in the Lefebvrian conception was the right to the city - to participation and to appropriation – “as the claim to the city (Lefebvre 1968).” Holston (2008 and 2009) suggests that “it has not been, as Lefebvre expected, the working classes of the cities of the Global North that brought about the right to the city. The foundation of this right, Holston argues, is laid within the cities of the South. It is in the peripheries of the cities, he argues, that residents organise movements of insurgent citizenship to confront the entrenched regimes of citizen inequality that the urban centres use to segregate them (Holston 2009, 245).”

Susan Parnell and Edgar Pieterse argue that “in fact the notions of urban citizenship have been applied to a much lesser extent to the basic developmental questions of how cities of the South might be

imagined or governed – a gap made apparent by the absence of an articulated rights-based agenda for the cities of the South (though they mark Brazil as a strong exception) (Parnell and Pieterse 2010, 148).” For them, “the challenge of using a rights-based approach amidst an urbanisation of poverty underscores the need for a different political practice – an engagement with the State and the downscaling of the developmental State to the city scale (Parnell and Pieterse 2010, 146).” They argue that “socio-economic rights require bringing the state back into development debates (Parnell and Pieterse 2010, 153).” They are writing against what they see “as the marginalisation of the State as a development action 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 opposition logic or political stance of perpetual resistance is unlikely to achieve reforms in the mundane functioning of the state, which is a precondition for cumulative changes that can transform the political economy of opportunity and provide institutional access to resources (Parnell and Pieterse 2010, 158).”

The main focus of chapter four is the interaction between negotiation and confrontation as modes of engagement and how these dynamics relate to rights in and within the city. Bombay had a series of severe evictions of pavement dwellers and residents of informal settlements in 2005, which resulted in the displacement of over 300,000 people, making these dynamics more obvious. “The Alliance – SPARC, National Slums Dwellers Federation and the Mahila Milan – has written extensively about a new form of deep democracy and resistance to dispossession and urban evictions (see Appadurai 2002, Patel 2002, Burra et al 2003).” It famously had too much political criticism. “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 the poor can get housing rights regardless of international covenants and national politics is to survive the evictions and demolitions until such time that the state concedes and enacts first protective legislations and then legal entitlements. Strange as this might sound, this is the real insight in the process – the subtext to the on-going war of attrition between the poor and the state (Mitlin and Patel, 2-3).”

Ananya Roy has argued that “the 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 (Roy 2009, 173).” In the context of arrests and criminalisation of the homeless, one must probe further – what spaces of political

engagement can exist in a context of repeated and gross violations? Do the arrests and detentions mark a limit or frontier of engagement or do they symbolize failure?

I argue that closing gaps “within urban social movements regarding choosing between or using multiple resistance strategies at once” is made more difficult when the target of the resistance is the Court rather than the government. I base this argument on a series of interviews I conducted with activists who are members of urban social movements resisting the criminalization of the homeless in Mumbai from the late 1990s to the present. “Even as activists struggle with the idea that a court order cannot be contested or the idea that it is not a place where the poor can and should voice their demands, on the one hand, and the idea that it is not a site where the poor can and should voice their demands, on the other, already complex divisions on axes of gender, class, caste, and vulnerabilities continue to play out in decisions about how to resist a court ordered eviction.”

Since the right and responsibility to challenge the government contrasts with activists' perception that they lack the right to challenge the Court, resistance tactics become compromised. This feeling is deeply founded in the homeless people's perception of the Court as being distant from them, both physically through physical access hurdles and symbolically through the Court's standing in society and politics. The function of attorneys as interlocutors and symbols of the obstacles to participation in the judicial system contributes to this sense of alienation. It also shows up in the structure of the legal defences argued for and by persons who are being detained or arrested. The limitations of arguments that attorneys feel the Court would accept as valid define rights in their legal meaning.

I contend that in order to advocate for the rights and citizenship of persons who are under fear of eviction, “Court orders change the forms, claims, locations, and methods of urban social movements. In particular, the emergence of the Courts has an impact on how urban social movements choose their tactics, introduces new actors and decision-making processes into movement spaces, changes the content of rights claims, and excludes some claimants, just as it has an impact on the political identity, narratives, and history of both the city and its homeless population.” In my dissertation's last chapter, I talk about these elements.

Notes on Methodology

Several years before I started my study for my dissertation, I started my fieldwork. I was born in Mumbai and have been a citizen of the city since before Bombay was renamed. It is also where I legally, culturally, and emotionally belong. From their arrests, I learned about the city's homeless

population. For many years before enrolling for my PhD I was a part of social movements resisting demolitions and evictions of homeless families and individuals, and groups lobbying for the amendment of the beggary laws that led to the criminalisation of the urban homeless – both in the street and in the Court. In 2012, when I started working for a project inside the Beggars' Home (a detention centre for those arrested in the Beggary Act) in Mumbai, I followed multiple stories of men and women who are arrested under the law and led a team for two years to rehabilitate them with their families or reintegrate them back to the society without the stigma of criminalisation.

The research and its results became a quarterly magazine in the year 2012-2013 for the same project that I worked for at the "Tata Institute of Social Sciences (TISS)¹⁹." The criminalisation had angered and horrified me, in addition to the life of the working homeless that came to a standstill inside the horrid prisons guised as Beggars' Homes. I visited the locations that the women and men told me they lived or were employed at, to seek answers or closure to why these people were where they were. Those years transformed my imaginations of what the urban homeless were and grounded me in realities of a parallel life and world that always existed. The streets became an everyday place, its brutality and vulnerability getting more and more obvious by the day; as well as its resilience. As the years passed, I needed to understand the city and its urban homeless on their terms and look from their perspective instead of at them. This dissertation was conceived at that point.

To study a marginalised group in urban theory is an urge to explain marginalisation from the gaze of the outsider. I do not intend to argue the politics of representation or location but suggest another kind of native researcher – who uses the marginalised spaces and people to understand her own location – academics and planning, authority, and institutions of governance as well as herself. I use marginal, both as a spatial and locational marker for theoretical inquiry and ask different questions to construct theory from and with them. This dissertation is, at its core, a study of inequality. But some of the most urgent issues that the homeless ask the city - and the individuals who work with them - are about planning, governance, and the politics of exclusion. The task of writing this dissertation is a political exercise to build around the theory of exclusion and inequalities in the city, presenting its concerns to the academia, government and the public. The researcher is therefore a native, trying to understand the foundations of the power centres from within.

My research began with interviewing and finding addresses of employees, friends and/or relatives of those who were arrested to prove to the court that they are not beggars but working homeless in the

¹⁹ See the magazines here - <https://tiss.edu/view/6/projects/koshish-projects/publications/>

city. With a list of addresses and sometimes random streets or names of people, I headed out to find approximate locations, reaching neighbourhoods and asking residents if they knew someone by this name and of this description. Street vendors, rag pickers, shop keepers, stall owners were the best informants – they knew names, locations, number of people living in a cluster or working somewhere very clearly. This helped me verify the information given to me by those inside the detention centre and write reports addressed to the Court to file for their release - acquittal or bail. Searching for addresses, I realised that there were parallel lives in the cities everywhere – one of concrete structures and name tags that stood up shouting their presence and the other that were marked by local narratives of space.

When I started to gather data, I saw a trend that I show in the city's first chapter. All of the arrests are taking place in the city's centre, in areas that the administration wants to seem orderly and tidy. Another pattern that emerged was that residents in highly gentrified areas were more likely to be arrested because the arrest squads tended to operate in and around such designated areas. This gave me the opportunity to recreate the city from the inside out and to retrace its planning over the years of its development. I ended up in court because of these arrests. I knew of a few PILs that had been filed that resulted in the release of the homeless in Delhi. But I realised that there were orders that led to arrests or demolition of homeless dwellings at different points in time. The major source of this dissertation is a collection of 20 PILs that were filed in the “Bombay High Court and the Supreme Court of India” that directly impacted the urban homeless in Mumbai when I read Ram Lakhan's petition, which then inspired me to read another and then another. I was able to see copies of the petitions, temporary orders, and committee reports submitted throughout the hearing. I concentrated on the words the judges used in the text to support their judgements and “the logics of rights and public interest”, as well as the routes taken by these words across the city by the media and implementation agencies.

The challenging part of the fieldwork was trying to understand resistance to arrests. For people it was hard since most did not know they were being arrested or being sent to prison unless they were presented in Court or put in the cell cramped with a hundred others like them. I turned to interviews with activists, and members of the Alliance for Homeless – including academicians, lawyers, researchers and activists, community-based organisations and the homeless inside the detention centres and on the streets. Most times interviews were conversations, based on life experience and what the city meant to each one of them. Transcribing the interviews was also sorted and contextualised according to the context of each statement. I aim to do justice to the words.

Why is this discussion important?

Homeless individuals are currently being detained at a point when rights are lost, citizenship is compromised, development is not realised, and exclusion and inequality are exacerbated. We must comprehend how we got here, including its particularities, continuities, claims to the city space, and experiences of being criminalised, in order to realise a fair city. So, in order to really comprehend what these patterns are teaching us about the city that is and the city that can be, one must do more than simply describe it.

Param, the beggars' home resident I introduced on page one of this chapter - from one of our conversations had asked me, why are these questions important? Hers was a question – that as a resident of Mumbai or as a researcher I was also trying to understand. In Mumbai, everyday where the police were arresting and detaining hundreds of homeless people living in the city sometime for a couple of days and at times for generations – without any effect on life of the city, without governments being affected, no media stories, no response. These detentions are viewed as necessary for effective administration and the general welfare in Mumbai. when resistance by social movements was difficult. Where a judicial innovation like PIL that aimed to increase the urban poor's access to justice has turned into another location of their exclusion. When neither a claim of poverty nor a demand for rights seemed to be enough to ensure that a large number of its citizens had a title to the city. This dissertation is animated and motivated by Param's inquiry. It also emphasises the necessity of progressing in the direction of a city of equality, justice, and houses, even if that city has a little thatch roof that is uncomfortable near to your head.

29

Chapter One

**Decades of The Changing Urban
Mumbai via Bombay: 1888-2020**

“Bombay²⁰ ...It is a modern city, a city of the present and the future, but not of the past²¹.”

In a workshop on Urban Poverty and Homelessness²², filled with academics, activists, urban planners, and architects, scraping through the urban agenda in 2016²³, the chairperson spoke about creating inclusive spaces in Mumbai, for Mumbai's homeless and urban poor and about the means to attain these goals. She concluded by stating that the obvious reason for homelessness is the failure of planning in Mumbai, pointing to a rather simplistic understanding of the political crisis. This rhetoric of failed planning has become an easy, acceptable argument across all disciplines and sectors to justify and explain exclusion in urban development. The plagues of 1896 and 1899 in Mumbai were perhaps the first signs of the manifestation of what could go wrong when the needs of an expanding city are misunderstood and what implications it can have for its people, especially the poor.

The Covid crisis in 2020 and the chaos it created in city life in Mumbai is testimony to this century long dilemma of urban planning. Filled with crisis, urban planning is seemingly a failed process, with ample justification for denial of space and citizenship. The increasing interventions of the courts in urban governance, the politics of urban civil society movements and new forms of negotiations for citizenship seeking rights to and in the city, are the main subjects of this thesis. The interventions by the higher courts of India through judicial orders and responses to Public Interest Litigation (PIL) has led to determining the meaning of 'space' for the urban poor, in addition to an emphasis on the 'failure of urban planning' by the courts. In this context, I feel the need to review the development and progress of Mumbai as a metropolis throughout time and evaluate the shortcomings of the State's urban planning policies.

The Manmohan Singh led Congress government inaugurated the “Jawahar Lal Nehru Urban Renewal Mission (JNNURM)” in 2005 in order to recast cities with a broad inclusive focus, as opposed to the previous failed planning models for Indian cities²⁴. The global analysts, McKinsey, and Co., in their report on urbanisation in India and on Mumbai's urban transformation, explain how urban plans are

²⁰ Bombay is now Mumbai; it had a name change in 1994 and since then the political decision to go back to its pre-British name of sorts has stuck by. As an individual I respect this name change, but as an author of this thesis, I chose to refer the city as Bombay and Mumbai alternatively depending on the context of this study, both historically and politically.

²¹ Furneaux, James. 1895. "Glimpses of India : A grand photographic history of India, the Greatest Empire of the East." London & Bombay: C B Burrows and Co. 194-196.

²² Homeless is a contested concept, but in this context, it is sufficient to state that homeless people are the urban poor with lack of private space. Homelessness is attributed to urban poor, their precarious living conditions and civil rights that are taken away based on their ostensible poverty.

²³ The Workshop organised by the ActionAid Mumbai was held in November 2016 at Mumbai, titled 'Consultation on building a National Alliance for Homeless in India'.

²⁴ Then Prime Minister Dr. Manmohan Singh's launch speech of JNNURM on 3 December 2005.

hardly practical, developed without understanding India's urban context, and therefore rarely followed and applicable (McKinsey 2003; 2010, 26). Leaders of urban social movements have been protesting the systemic flaws in planning the cities stating the 'arrogance of planners and their processes' leading to multiple exclusions in Indian cities (Roy 2009, 82). Roy argues that the rich and powerful have subverted the process of urban planning by deregulations that work in their interest.

Academics in urban studies speak on similar lines. Swamy et al. (2008) mention the crisis of planning as an eternal phenomenon, carried forward through decades of institutional plans for cities, where cities remained absent in the political imagination of India. "The problems of Indian villages have also been stated as a prime reason for the lack of progress in building a consensus on a 'national housing policy' for cities (Sivaramakrishnan 2011, 31)." The JNNURM's vision of empowering municipal governments advocated for a rescaling of the modes of governance where the local wards in the city could control changes in the urban and therefore change the dynamics of the relationship between the Central, State and City government. Sivaramakrishnan (2011, 34) notes that the JNNURM funding from the center was aimed at the States and cities to take this vision forward, simultaneously requiring the city to follow toolkits, and approval processes designed, monitored, and evaluated by the Central government which risked any possible autonomy that the JNNURM vision offered for the city-governments. This dichotomy of the JNNURM has eventually curtailed city-level planning and continued to empower the center for urban governance.

Present day Bombay has a landscape that is home to the most powerful and the most vulnerable citizens of India. Understanding the pre- and post-independence city is essential to navigate the perpetual nature of its homeless population. The recent pre-occupation of Indian government with the idea of Smart Cities (e.g.: 100 Smart Cities, 2014) and the race of municipal governments to be the best 'Smart City' have generated a lot of fantasies. The Brihanmumbai Municipal Corporation (BMC) has refused to be a part of this race, due to political differences of the Municipal government with the Centre. In understanding Bombay today from any lens, most discussions are focused on short term readings of the city and not its historical rhythms.

To present any clear reading or projection about the city and its people, any study must involve the recognition and discussion of the broader changes that Bombay has experienced in the decades after it was created. The social and political responsibility of coping with the population fluctuations in Bombay is an issue which political parties have consistently side-tracked and it is the refusal to

recognize this that is dismantling the city space. The study's understanding of urban poverty, particularly the homelessness in Bombay, is situated within this context.

Structure of this Chapter

To understand how spaces in Bombay became inaccessible and created inequities, an exploration of specific historical processes of Bombay is needed. This chapter introduces Bombay and recounts three stages of its development as a city with a significant urban poor population and stark urban dichotomies: from being a port city to being a manufacturing city to finally becoming a hub for new economies supported by globalization. It is important to assess the different legal and political processes that have fashioned the city, and how the political parties, lawmakers and judiciary have converged on varied government interests. More than half of Bombay lives in slums, on pavements, under the bridges or on railway platforms today.

Exclusion is mired both in the historical growth of the city and is also due to local and global processes that have exaggerated the exclusions. How have legal bodies and planning processes contributed to create a regime in the city that integrates these asymmetric developments, simultaneously redefining 'legality'? How are the courts becoming an organic link between people and the government and what is the implication of the judicial actions on the State and its ideas of territoriality²⁵? Access to public spaces for the homeless and the urban poor is increasingly under threat with the municipal authorities, state police and the judiciary imposing restrictions on certain groups of people. If the Court rules with the urban poor in mind, why do they frequently become targets of the law? Yes, the law is made by the legislature and reviewed for its constitutional validity by the judiciary, but let us look at evidence to prove the targeting of the urban poor through PILs and other judicial rulings and their access to spaces in the city in later chapters. To understand the multiple layers of exclusion in contemporary Bombay, let us first locate the processes of creation and presence of the homeless in the diverse landscape of the city.

Mumbai houses a significant number of homeless²⁶ groups who are among the most vulnerable residents of the city. From colonial times, to post-independence, homelessness has been perpetual in the city - every era marked by a different set of negotiations and processes that led to the making and

²⁵ Territoriality in this study is defined as an active strategy to control a population by controlling a geographical area, in this case Mumbai. See, Cox, K. R. 2001. "Territoriality, politics and the 'urban'." *Political Geography*. 20: 745–762, for a discussion on the idea.

²⁶ "The Census of India defines the homeless as those who do not live in census defined houses but stay on pavements, roadside, railway platforms, temple sides, streets, in pipes and other open spaces (Census Handbook 2011)." This dissertation follows the census definition of homeless in understanding the plight of urban poor in their context. The usage of the term will therefore refer to an umbrella of people that classify as homeless according to the State definition and understanding.

sustenance of homelessness. The chapter takes us through the socio-political transformation of Bombay over a century (from 1888 to 2020²⁷) that builds on specific aspects of urban expansion to understand the spatial manifestations of urban poor and the homeless in contemporary times, within the framework of exclusion.

The task is to understand what has made these transformations exclusionary, to not consider it a given socio-political problem that needs resolution, instead as a question that needs to be subject of analysis. What do spaces in Mumbai today tell us about its planning, institutionalised exclusions and how we view the growth and development agenda of the city? To get to this, I first construct a brief spatial history of Mumbai and various events leading to the expansion and growth of the city, thereby understanding the relationship between legality, planning and exclusion of the poor.

The changes in the post-liberalized Bombay are interrogated towards the end, to further understand what labelling of the occupations of certain groups and their actions as ‘illegal’ is meant to do, while also understanding how the city’s politics is defined by identity politics and regionalism. It also explores the inequalities by describing and assessing the way the city was spatially structured, that made space for some, while excluding many others.

Port City – the context to 1888

After it was taken over by “the East India Company” in 1664, the Company created the city to serve the needs of the trading communities. Bombay being a water-logged city, in 1674, Governor Gerald Aungier²⁸ arranged to buy the available land owned by *Kolis* and other fishing communities (Malabari 1910). Since there was not enough land available, Madgaonkar (2008, 18) notes,

“... the major part of the island which is 40000 Bighas²⁹, is sea water, and only 10000 Bighas is land. Bombay had five small islands of salt water creeks filled with mud. These islands can be seen only during low tides; but during high tides the five islands become seven.’ Earlier Bombay was ‘one mile long and half mile wide.’”

²⁷ I chose 1888 as my starting point since the “Brihanmumbai Municipal Corporation (BMC) or Municipal Corporation of Greater Mumbai (MCGM) was established in that year by the British in acknowledging Mumbai as a city; as also other significant developments like the inauguration of the Victoria Terminus (now Chhatrapati Shivaji Maharaj Terminus).” The establishment of the BMC and other important events in the following century, India’s Independence and partition, establishment of Indian judiciary and laws in free India and tracing its role in the evolution of the homeless populace until the 21st Century, forms the crux of this chapter.

²⁸ Malabari, Phiroze. 1910. “Bombay in the Making: Being Mainly a History of the Origin and the Growth of Judicial Institutions in the Western Presidency, 1661-1726.” London: T Fisher Unwin. 115-145. <https://archive.org/details/bombayinthemakin00malauoft/page/38/mode/2up>.”

²⁹ A unit of measurement of land in India, where 1 Bigha is approximately 0.25 hectares.

In 1685 Bombay government wrote to “the East India Company” in England that unless and until the creeks are reclaimed, it is impossible to make it a habitable city for people. Therefore, the permission to reclaim the creeks was sought. To push the sea back and make it habitable for humans and recover from its water logging to make it a profitable space was deemed an unimaginable attempt (Madgaonkar 2008, 43). Since then, until now, for over 350 years, there has been this perpetual attempt to reclaim the creeks by dumping piles of garbage.

The idea of ‘Bombay’ as imagined by the British was to set up a port that connects India to London and establish trade and commerce from their base in India (Mehrotra and Dwivedi 1995, 19), with Mumbai being the closest port (Sundaram 1989, 38). It was not their imagination for it to grow into the massive metropolis as it stands today in the 21st century, rather a small trading factory. The fact that the islands of Bombay³⁰ were physically away from the mainland protected it from being affected by battles and political disturbances in the rest of India. The growth of the cotton textile industry from the end of the eighteenth century to the 1940s helped the city establish itself as an industrial powerhouse. The industries were in the island city's center areas, north of the ancient Fort and the fishermen's original town, and are now known as the Mill Lands (known as Machimar Nagar). “Post-independence until the seventies, the urban economy diversified into petroleum production, pharmaceuticals, consumer goods and engineering industries — providing employment to a huge population that crowded the streets over the years (Mehrotra and Dwivedi 1995, 49).”

Bombay, as epitomized by most Bollywood movies of the decades between 1950 and 1990 and some even later, came to be known as the city where dreams come true. This is the time when Mumbai expanded beyond the fringes of the Island City towards creating a suburb and then to Thane and Navi Mumbai (Phadke 2009, 34). Bombay is among those large cities in the world that have been studied from various aspects with a continuing commentary on the city. From starting off as a peripheral city and trading port for the East India Company to an international market and India's financial capital linked to global systems, Bombay has transformed into a Metropolis amidst multiple crests and troughs in its journey.

Before we proceed, defining Bombay and clarifying its governance systems is needed. Planners conceive of the city as an urban agglomeration called ‘Bombay Metropolitan Region,’ now called

³⁰ “The seven islands of Bombay were territories of the Silhara dynasty and the Sultan of Gujarat before being occupied by the Portuguese in 1534; they were transferred to England as dowry when Catherine of Braganza married Charles II in 1661. The islands were rented to the East India company by Charles II for 10 pounds a year and, by 1845, merged into one piece of land by reclamation projects and later grew to form the present-day Greater Bombay (<http://www.bl.uk/learning/histcitizen/trading/bombay/history.html>).”

'Mumbai Metropolitan Region,' covering 4355 square kilometers, with eight municipal corporations, nine municipal councils, and over 1000 villages³¹, the population of this whole region is over 20 million (Census of India 2011). In this thesis, I'll talk about Greater Bombay as a separate region with a 437 square kilometer municipal corporation, the Municipal Corporation of Greater Mumbai (MCGM). Three political-administrative entities—the MCGM, the Government of Maharashtra, and the Government of India—are responsible for the governance and management of the city. For instance, the Indian Railways Board, which is part of the Indian Government, oversees the Mumbai Railways. The state manages the land policy, housing for urban poor, slum redevelopment, etc., and also the law and order through the home department. The MCGM manages water supply, sewage, public health systems, education, electricity, etc., to state a few³². Bombay is significant for the way politics is articulated in Maharashtra and vice versa, and it greatly impacts issues of governance and space and how the urban poor get affected.

City of Migrants: 1888-1947

Bombay has always recorded an increase in its population over the last five centuries. Acharya and Shingane (1889) find the growth of population related to the effect of American civil war on Bombay. There was high demand for cotton and the share market spiked. This generated the demand for man power in the city. Bombay witnessed the influx of migrants witnessing a growth of over three lakhs in population during the decade. The decline in the population in the subsequent decade is also attributed to the end of American civil war, with no jobs and the declining economy, the migrants had to leave the city. Before we step into the details of the multiple layers of lives that have emerged and molded the same geographic space, let me present an overview of the rising population between 1816 and 1881³³.

<u>Year</u>	1816	1833	1844	1851	1864	1872	1881
<u>Population</u>	1,61,550	2,34,032	4,24,121	5,24,793	8,16,562	6,44,405	7,73,196

Table 1 - 1816-1881 Mumbai, Source: Acharya and Shingane (1889)

³¹ Data from the Mumbai Metropolitan Region Development Authority (MMRDA) site. Accessed 20 April 2020 here: "[https://mmrda.maharashtra.gov.in/documents/10180/3611646/Citizens%20Charter%202015%20\(English\)/cc5bebc8-b05d-4dc9-817e-c026de0142eb?version=1.1](https://mmrda.maharashtra.gov.in/documents/10180/3611646/Citizens%20Charter%202015%20(English)/cc5bebc8-b05d-4dc9-817e-c026de0142eb?version=1.1)"

³² The state government appoints the municipal commissioners in all cities and there has been a history of conflicts of the commissioners with the local corporators. See, Thakkar 1995.

³³ This data was published by Balkrishna Acharya and Moro Vinayak Shingane in their book 'Mumbaiche Vritant', 1889.

After the first completed census in 1881, there has been regular counting of the population by the Census of India. The following table presents the decadal pattern in the rising population of Mumbai from 1891 to 2011³⁴.

Year	Population
1891	8,21,764
1901	9,27,994
1911	11,48,757
1921	13,80,448
1931	13,97,812
1941	18,10,358
1951	29,94,444
1961	41,52,053
1971	59,72,575
1981	82,43,405
1991	99,25,891
2001	1,19,78,450
2011	1,24,42,373
2021	2,06,68,000

Table 2 - 1891-2021 Mumbai, Source- Census of India reports

The 1941 census reported a record growth of over four lakhs in Bombay. This census was conducted during the Second World War. Experts hold the opinion that 1941 census is unreliable because of the unstable socio-political situation during war (Phadke 2009, 51). The 1951 census shows an increase of over One Million which can be attributed to the expansion of municipal boundaries of the city. Verma (1985, 20) notes that the tiny island expanded by incorporating Santacruz, Bandra, Parle-Andheri, Juhu, Kurla and Ghatkopar councils into the Bombay corporation in 1950. Even Chembur Panchayat and nearly 34 villages under Thane district were merged into the corporation. Hence, a total of 68 square miles area was added into the “Bombay Municipal Corporation and the corporation

³⁴ Census of India Reports at, <https://censusindia.gov.in/>

was renamed as Brihan Mumbai Municipal Corporation (BMC).” Further, in 1957, municipal boundaries were expanded to the West till Dahisar, and to the East till Mulund, making the total area of BMC to 189 square miles. Mumbai’s demography was changing rapidly. Political episodes of the world were pushing the boundaries of the city, compelling it to re-adjust, remodel, and reconfigure. Industrial capitalism was forayed into the city during first quarter of twentieth century.

Native inhabitant communities like *koli*, *bhandari*, *paachkalashe*, *sutar*, *vaadval*, *pathare prabhu*, and *palshe Joshi* during early days of British in the city have reportedly feared bandits operating mostly at night on empty roads (Phadke 2009, 28). Like these communities, British too were afraid of attacks from Marathas, Mughal, Portuguese and Dutch due to which the then governor of Bombay Joshua Child commissioned to build a fort in 1669, completing it in 1716 (Phadke 2009, 29). Similarly, small forts were commissioned by the British in Mazgaon, Sewri, Sion, Mahim and Worli in order to secure themselves from attacks (Madgaonkar 2008, 53). David (1993, 104) notes that the people living in forts used to be called as *Goryanchi Mumbai* (white people’s Mumbai) and people living outside of fort used to be known as *Kalyanchi Mumbai* (black people’s Mumbai). He further mentions that in order to make the whites feel safe, the company administration ordered to close the doors of the forts (Apollo gate and Church gate) after sunset. The city used to look like closed jail in which no one was allowed to enter after sunset. Early insecurities and precariousness among people can still be found among people living there at present, but the nature of these insecurities has changed, so have the people holding these insecurities.

By 1888 Mumbai had emerged as one of the commercial centers of India with the set-up of a municipal corporation and a hyper active hub for international trade. The port city which exported cotton had now become the country’s top manufacturer of local cotton textiles by the 1900 (Chandavarkar 1994, 40) employing thousands of people. The number of textile mills grew from 40 in 1880s to 136 by 1900 (Mehrotra and Dwivedi 1995, 59). The flourishing leather industry at Dharavi³⁵ set up the first tannery in 1887, drawing communities from the south of India (Mehrotra and Dwivedi 1995, 61). The increasing industrialization over the beginning of the 20th century attracted a huge number of skilled workers to the city making a rapid, steady growth until the mid-20th century (Sundaram 1989, 72).

³⁵ Among the most densely populated areas in Mumbai, “Dharavi is one of the largest slums” in Asia. Founded in 1883, it has been home to the migrant labourers in Mumbai and is a highly multi-religious, multi-lingual settlement. It continues to be the main residence for labourers from the informal sector.

The manufacturing sector diversified, business agglomerations were established and this made Mumbai attractive as an office location, including the beauty of overlooking the sprawling coastline that made it a luxurious set up. Banks, oil companies and dockyards, railway workshops, ship building, paper mills, State and Central government offices, multinational companies and other public sector institutions came to be headquartered in Mumbai post-independence (Sundaram 1989, 73). The city became the “financial capital of the country” and became linked with the world and national economy intricately. These and many more lucrative opportunities offered by Mumbai led to waves of migrants traveling to the city in search of employment over the course of a century³⁶, with settlement after settlement being added to the city center. These segregated settlements, as one can observe even today, have always been distinct in terms of the residents, their lifestyles, cultures, social and economic classes; some were planned, some unstructured, some a result of active mediation, others a result of governmental action, some *pucca* and others *kutchaa*.

In order to accommodate the rising population and their commuting to places of work, roadways became the focus for the BMC. As a result, a resolution was passed in 1889 which prohibited arcading on the streets (Mehrotra and Dwivedi 1995, 60). This focused on reducing congestion on smaller roads and build broader roads in the plan for expansion. The BMC simultaneously filled in swampy land between the islands of Parel and Worli by constructing roads and mills and worker *chawls* (Mehrotra and Dwivedi 1995, 60). This led to a steep increase in land prices due to a demand for housing in the area, thereby leading to the emergence of a connection between infrastructure and real estate prices. Similarly, a lot of other places were closed including old water tanks and quarries, to create more space for buildings. During the boom of the cotton industry, Bombay had therefore witnessed a lot of reclamation (Chandavarkar 1994, 45) — a beginning of what we witness as modern Bombay.

In the 1890s, the sport culture was ushered into Bombay with plots given by the BMC for construction of Gymkhanas by the shore, pavilions for tennis and cricket, all funded by Hindu Brahmins like *Gordhandas Parmanandas*, *Gordhandas Tejpal*, *Gordhandas Khatau* and *Maharajas of Idar and Darbhanga*. Other gymkhanas were opened by Parsis and one dedicated gymkhana for European women was founded for badminton and tennis (Mehrotra and Dwivedi 1995, 68). This decade also saw an increase in the education and employment of women. The clubs and gyms were a means to promote social interaction outside of work and home in the highly dense city that Bombay had turned

³⁶ The period that this chapter loosely charts is from 1888-1990 to present a brief historical context to the development of the city and growing population across classes, to locate the homeless urban poor in the contemporary city.

into. But these spaces remained exclusive for the elites and Hindu Brahmins of the time. In the other end of the city where the workers of the city resided, this decade saw the rise of eating houses (Mehrotra and Dwivedi 1995, 68). A lot of caste taboos and restrictions were alleviated by these eating houses with the rise in the number of mill and dock workers who had no cooking facilities in their shared tiny *chawl* rooms (Phadke 2009, 34). The distinction between rich and poor areas however were marked with strict borders, with the latter having zero access to the former's spaces.

Another incident that drastically changed the population and its composition in Mumbai were the Great Famines³⁷ that affected central India and the Deccan plateau between 1896 and 1900. Hundreds and thousands of poverty-stricken peasants and workers from drought-ridden regions came to Bombay in search of jobs and livelihood. The rising textile industry and dockyards, which were looking for cheap labour, were opportunities for the laboring masses to survive. They settled in an area called '*Girangaon*' roughly translated as 'village of the mills' (Dwivedi and Mehrotra 1995, 74), which includes present day areas of Tardeo, Byculla, Mazgaon, Reay Road, Parel, Sewri, Worli, Prabhadevi and Naigaum. In the beginning of the 1900s, it became evident in the spatial management of the city that the south of Mumbai, which consists of present day Colaba³⁸, Fort and Back Bay³⁹, were planned and developed extensively to make Mumbai the posh hub of the country in all its magnificence. On the contrary, this illusion broke when one stepped into the areas of Girangaon (Dwivedi and Mehrotra 1995, 75).

In the decades of 1880 to 1890, the congestion in Mumbai was shocking with a population spurt of 0.7 million to 0.85 million between these years (Da Cunha 1900, 352). In what can only be deduced as a problem of space with the sudden growth of population, there also was immense scarcity of water and sanitation facilities. These challenges of living in an overcrowded unsanitary space, eventually led to the "outbreak of bubonic plague in Mumbai in 1896-97." In the wake of the epidemic, a lot of attention was drawn towards Mumbai — both government and the public in general — to the appalling conditions of the city in a highly dense corner of the western coastline of India.

³⁷ The Indian famines of 1896-97 and 1899-1900 affected most parts of Central India, Hyderabad, Madras and parts of Rajputana, killing over 1 million people each at both times. For details see, "Imperial Gazetteer of India. 1907. Vol. III, The Indian Empire, Economic, Chapter X: Famine." Oxford: Clarendon Press. 475-502.

³⁸ Alternatively spelt as Kolaba as well.

³⁹ The Back Bay reclamation project was a massive failure due to incomplete planning, corruption, and other lapses. Only three blocks were completed of the massive reclaimed area of 1145 acres by the Development Directorate. "The project became known as 'Lloyd's Folly' after Sir George Lloyd, the then Governor of Bombay."

Arthur Crawford, the former municipal commissioner of Bombay (1865-1871), outlined plans for urban renewal of Mumbai during his tenure that would contribute to making Mumbai cleaner (Crawford 1908 as quoted in Dossal 2005, 3897). Arthur Crawford had resigned from his position as the municipal commissioner on October 28 1871, while he faced public opposition for his emphasis on urban plans focused on waste management, public health, and better housing for all. Responding to the review led by Governor Sydenham Clarke, Crawford's note⁴⁰ emphasized the need for comprehensive planning for Mumbai, to address the housing needs with respect to demands of water, drainage, and waste management systems (Dossal 2005, 3897).

Mutalik's notes⁴¹ on Mark Twain in 1896, on his midnight drive in Mumbai say, "everywhere on the ground lay sleeping natives - hundreds and hundreds. They lay stretched at full length and tightly wrapped in blankets, heads, and all. Their attitude and rigidity counterfeited death." (Mutalik 1978, 18). What is terrifying in Twain's observation as a Westerner in Mumbai is the pinching reality of what Bombay was during the prosperous Victorian regime. A mapping of the city during these times would present the ports, docks, mills, railways, and the business estate, which collectively offered employment to the growing population, showed all densely located together on the narrow island⁴². Naturally, the workers who could not afford traveling by trams and trains chose to live close to their work spaces, resulting in overcrowding and insanitary dwellings. The plague forced people to move to healthier suburbs of northern Bombay or to leave Bombay. A lot of these workers were employed in the unorganized sector, they earned only enough to share crowded single rooms in slums, while another section of workers lived on pavements due to lack of options to be accommodated (Dwivedi and Mehrotra 1995, 81).

Era of Development

In its path to growth and development, Mumbai became a den of congestion, harboring a lot of disease and illness and paradoxically, it was also during these times that being 'homeless' in the city became a safe escape to the mores of life in drought prone villages. The city also offered a sense of safety from the caste-ridden villages, where atrocities were rife. In my own experience of working with homeless groups in Bombay⁴³, most individuals and groups belong to Scheduled Castes and

⁴⁰ Crawford's account of those who opposed his plans have been quoted in Dossal (2005) and in his note in 1908.

⁴¹ Keshav Mutalik refers to the two studies of Mark Twain's trip to India and draws from notes from newspapers and other published materials, including manuscripts from the Bancroft library, UC Berkeley which hold the collection of The Mark Twain Papers.

⁴² The areas stretch from present day Colaba, Girgaum, Walkeshwar in the south to Mazgaon, Sewri, Dadar in the centre and Bandra, Mahim, Dharavi in the North

⁴³ Based on interviews conducted between 2012-2017; and interacting with communities in Greater Mumbai and its suburbs. There could be other communities as well, but I have not come across any during my field work and work in

Scheduled tribes, followed by de-notified tribes, other backward classes (OBC's) and Muslims, the roots of which can be traced in another contemporary study of Castes in India⁴⁴, on how certain communities fled villages and found recourse in India's foremost city.

The after effects of the first epidemic of 1896 were aggravated by the recurrence of the bubonic plague in 1899 which presented the need for an organized city planning body. The local government (BMC) was hardly able to manage the civic needs of the ever-expanding city (Dossal 2005, 3898). At this point, the city government stepped in with one of its first reclamation projects to claim more lands from the sea and expand the city boundaries, aiming to decongest the city and its congested slums, pavement dwellings, and overcrowded public spaces and make the spaces liveable. With this idea of a long-term implementation of proposed improvements, "the Bombay City Improvement Trust (BCIT)" was formed⁴⁵ with the aim of improving Mumbai's physical condition in the upcoming century.

Among the major responsibilities of the BCIT were — removal of unsanitary houses and reducing overcrowding in the city by taking up new housing projects. Some of the spaces include Nagpada, Agripada and Koliwada - where roads were widened, dilapidated buildings were pulled down and new commercial hub was built between 1908 and 1914. It is today the center of all Central and State government offices in Mumbai — the Ballard Estate: a 22-acre land reclaimed then on the south of the city. The Trust's schemes in order to expand the city toward the North, also covered private lands and buildings and restructured them to decongest areas like the Crawford Market, Parel, Mahalaxmi Race Course, Dadar, Matunga and Sion (Orr 1917 as quoted in Arnold 2012, 114). In a review of the BCIT's achievements in 1908, "an acute shortage of housing and land for the poor (Dossal 2005, 3898)" was noted as an urgent need for the city. The Worli scheme, Dossal quotes, completed in 1922 filled 120 acres of land providing sea facing homes for the wealthy on the West end of the Island and around 100,000 homes for the poorer working classes on the East end. The primary targets for the Bombay government to decongest the city were the poor and homeless, an attempt to push them out to the emerging suburbs.

State institutions like Bombay Beggars' home, where the working homeless are arrested daily under false accusations of beggary. Due to lack of reliable official data on homeless communities, it is hard to ascertain the exact number of people living on the streets and their community identity.

⁴⁴ Ambedkar, B. R. (1979) 2014. "Caste in India: Their Mechanism, Genesis, and Development. BAWS. Vol. 1." Govt. Of Maharashtra. New Delhi: Dr. Ambedkar Foundation.

⁴⁵ The trust was constituted by the Bombay City Improvement Act, 1898, to resolve problems that came up with the epidemic of 1896.

The report for 1899-1900 of the BCIT reads, “The purpose of the housing schemes is to provide space for the expansion of the city and to encourage and develop the migration of the population to the suburbs which is already in progress on a considerable scale. The overcrowding, which is so great an evil in the City, is hoped to be materially lessened... ...An important aid to this result is the enforcement of more stringent regulations to the heights of the buildings and minimum amount of air space between connected dwellings⁴⁶.”

Like the BCIT, the Bombay Port Trust⁴⁷ (BPT) also reclaimed over 200 acres of land from the eastern end of Sewri up to Colaba island in south Bombay. The massive Sewri-Mazgaon reclamation, completed in 1912, transformed the end of the city, with all the docks, depots, warehouses, and estates established on the land reclaimed from the sea (Dwivedi and Mehrotra 1995, 170). This became the hub for finding employment opportunities for workers and migrants from outside the city. People started to find houses on the eastern shore and most lived in makeshift tents along the newly built raised pavements. Even today, the road leading from CST to Sewri houses thousands of pavement dwellers and homeless workers living there for generations⁴⁸. Citing from Stanley Reed⁴⁹, the longest serving editor of Times of India, about the changes witnessed in Bombay due to the reclamation done by BCIT and BPT⁵⁰, one can visualize the creation of territories as they are today.

Reed (1952, 176) writes, “The palms of Gamdevi have given place to the flat-bordered Hughes Road... Who would believe that where the broad sweep of Sandhurst Road cuts right across the island from west to east, there was a generation ago a plexus of mean streets so complex that no one dared to enter it..., where Princess Street now runs into Girgaum road and bifurcates to the market, was the closed packed lane called *Lohar* Street. The mean and torturous way which led from the end of the north and narrow Prabhadevi Road, along which I used to motor in fear before dawn to Santacruz, have been swept aside for the broad highway... bringing Bandra as near the Fort as Malabar Hill...” Reed’s words are demonstrative of how strategic, controlled, and planned development looked for Bombay in the late 19th and early 20th century. The clearly defined jurisdictions, territories and

⁴⁶ See, Dwivedi, S., & Rahul Mehrotra. 1995. 168.

⁴⁷ The BPT was established on 26 June 1873. It was one of the main gateways to India, and crucial in the emergence of Mumbai as the “financial capital of India.”

⁴⁸ Interviews of individuals and families living there taken in 2012, 2013, 2015, 2016 and 2017 are used to substantiate this claim in the thesis ahead.

⁴⁹ Stanley Reed lived in India for 50 years and served as the Editor of the Times of India from 1907 until 1924.

⁵⁰ In the government land holding BPT holds the maximum 752.7 hectares of land. Today, historical buildings like Gateway of India, The Taj Mahal hotel, Royal Bombay club and radio club are standing on land leased out by BPT for last 135 years. Of the total land owned by the BPT, 300.69 hectare of land is leased out to various institutions, private companies, and government bodies (Phadke 2009).

agendas were the norm and created a clear divide between spaces that could or could not be accessed by the working classes.

The opening up of the harbor railway in 1925 and the electrification of existing railways improved transportation facilities in the expanding suburbs of Mumbai. The extension of tram systems to the suburbs of Dadar-Matunga also pushed more people to buy/rent houses in the suburbs. The comprehensive suburban development to decongest cities pulled a lot of working-class population. Hence, over the first half of the 20th century, Bombay's geography and population distribution underwent changes. This also meant that the population was not any longer concentrated in the northern part of the city.

Rapid industrial expansion took place in Mumbai together with nationalist movements gaining strength in the early twentieth Century. The increased in-migration beginning from 1880s altered the character of Bombay. By the first decade of the 20th Century, not only the physical form but also the social, cultural, and political frameworks and patterns changed significantly. The government plans and interventions focused on turning this influx of laboring masses to the city's advantage and to push its industrial and commercial capacity. The mass reclamations, road and housing projects and industries contributed to the massive transformation of Bombay. Geddes⁵¹ emphasizes on "paying attention to the social when attempting city renewal or resettlement and it remains relevant even today." "Town Planning is not mere place-planning, nor even work planning. If it is to be successful it must be folk planning. This means that its task is not to coerce people into new places against their associations, wishes, and interest, as we find bad schemes trying to do. Instead, its task is to find the right places for each sort of people; place where they will really flourish... ...instead of harsh evictions and arbitrary instructions to 'move on', delivered in the manner of an officious policeman." Geddes observes that, "the chawls did not represent housing, but warehousing people! in Bombay (Geddes 1965)."

The BCIT and BPT added a huge chunk of land to accommodate the increasing population in the city. The BPT alone created 1880 acres of land from the sea reclamations (Dwivedi and Mehrotra 1995, 189). The expansion of industry however created a rising demand for space and housing for the workers, especially those that worked in mills, dockyards, railways, and warehouses. In the early

⁵¹ Geddes, Patrick. 1947. "Report on the Towns in the Madras Presidency, 1915 Madurai. In *Patrick Geddes in India*, ed. Jacqueline Tyrwhitt." London: Lund Humphries. 22.

years, mill owners built residential blocks known as *chawls*⁵² to entice workers to the harrowing jobs in mills, but people kept pouring in to the city and the demand for housing became a challenge for individual entrepreneurs and business people. For instance, in 1891, 1.26 lakh people came from Ratnagiri district alone, and by 1921 the number doubled (Phadke 2007, 68). Immigrants had their families, relatives and neighbors joining them in the city, overcrowding the chawls containing over 300 single rooms made for a stifling habitation with 5-10 people living in a single room. Every individual *chawl*, Phadke mentions, was inhabited by a single caste group, with clear demarcations of caste names at the doors.

By the early 20th century, Bombay was also introduced to the reinforced cement concrete or RCC by the West, which completely altered building styles of offices, residences, and roads too. This breakthrough gave rise to rapid rise of buildings on all the reclaimed lands - be it offices, mills, chawls or other residential apartments. This was also the beginning of high-rise buildings and gated communities in Bombay for the middle classes, educated clerks and professionals including doctors, lawyers, teachers — mainly migrants from the South of India - Cochin, Madras, Goa and Kanara (Dwivedi and Mehrotra 1995, 189). This is when the BMC investigated the possibility of expanding the limits of Bombay to Kurla, Ghatkopar and Juhu, between 1916 and 1921, with Borivali, Kandivali, Malad, Chembur, Mulund, Goregaon and Bhandup termed as 'Notified Areas' (Dwivedi and Mehrotra 1995, 189). People were motivated to move to these places due to cheaper land and housing prices, and the creation of roads and railways into these smaller villages up to *Mankhurd*⁵³, which made migrating to the suburbs a worthy idea. Between 1921 and 1941, the population of Bombay, and the pressure on land, grew from 1.3 million to 1.8 million (Census of India 1921, 1931, 1941) with over 50,000 people in the city with no housing at all.

By the mid-1930s Bombay had expanded extensively outward to the North as well as intensified around the core as a business district. This decade, with the two world wars, an economic depression and India's freedom movement, witnessed a lot of migration to the city and the simultaneous raising of higher buildings across Bombay to accommodate the growing upper and middle classes. The 'flat' system and co-operative housing societies were an evolving phenomenon of this time. There were

⁵² Claude Batley (1949) in 1930 described these *chawls* as, "single room tenements... from which neither heaven nor earth could be seen. By the mercy of Providence, only about 200 similar blocks containing 16000 rooms were even built, simply because people for whom they were provided, wisely refused to occupy them unless thousands of rupees had been spent in modifying them into something remotely fit for human habitation... These cheerless, single roomed chawls, deserve to be dubbed 'Lloyd's folly'." The empty chawls at Worli were used as satyagraha prisoners' camp during the Civil Disobedience movement in 1929-30.

⁵³ Mankhurd station marks the end of the Mumbai Suburban district, even today, crossing which one enters the satellite city of New Bombay.

clearly no housing provisions made for the laboring sections, which saw a steep increase in pavement dwellings and shanties raised across railway tracks, parks, and other public spaces. Estimating the population of homeless in these years is not possible due to lack of recorded data. The formation of Bombay Suburban district in this decade, occupied by more than a quarter million people, with the establishment of the Santacruz airport, changed the relationship of the suburb to the city (Dossal 2005, 3899).

Bombay city was increasingly dependent on the suburbs. The expansion of the city also introduced the idea of 'commuting' to the workplace. While this seemed doable for people with homes and finances to afford in a city like Bombay, the poorer sections were caught in a quagmire. People chose life on the pavements closer to places where they could find work over 'commuting'. Places like Fort, *Masjid Bunder*, *Pydhonee*, *Dockyard*, *Mazgaon*, *Byculla*, *Sewri* among others where offices, railway stations, shipping yards, docks and warehouses were situated remained spaces where finding employment was possible. Living closer to work allowed people to save time and money on commuting and secure a space within the city. It is in these places that one finds even today a huge population of Bombay's pavement dwellers and homeless individuals and communities.

Through the 1930s and 1940s Bombay influenced the political life of the India that was to be conceived. The development of Shivaji Park in Dadar shifted the focus of political activity and mobilization to the newly founded suburbs and, as a result of the changing policies of the British administration and Indian political parties, communal unrest manifested in Bombay in the form of six riots between 1930 and 1940 (Dwivedi and Mehrotra 2005, 198; Also see Masselos, 2007 and Dossal 2007). In addition to this, the precautions set in during the World War II between 1939-1945, created shortages and inflation in the city. The urban poor with little or no employment options, either migrated back to their villages or joined the precarious homeless population by the pavements. The launch of Indian National Congress' countrywide 'Quit India' movement in 1942 from Gowalia Tank (now *August Kranti Maidan*), which resulted in mob violence and death and extensive destruction of public and private property, as a result of Gandhi's arrest, was unprecedented (*ibid.*). The protests during the freedom movement and the catastrophes that followed until 1947 marked the beginning of the political, social and legal processes for the take-over of the city by India's ruling classes in the nation building exercises that were to come in the following decades.

Creating the State and its Capital: 1947-1990

In contemporary Bombay, the existence of parallel urban settlements is a very striking phenomenon. The sudden acceleration of in-migration between the 1950s and 1990s transformed the social and political make-up of Bombay and perpetuated a situation charged with intense duality. The urban poor comprised of mainly rural migrants formed a huge chunk of Bombay's majority (D'monte 2002, 78). Their capacity to live in the new age metropolis depended on their abilities, social values, and cultural attitudes, which they carried with them. In the process, they changed the political system of the city. The urban poor have always formed an identifiable element among the urban population in Bombay.

Today, while the city continues to be composed of different worlds, with very different physical manifestations, the stark contrasts are also made visible due to their presence in a single space. Emblematic of this coalescence of the two worlds in one space are the pavement dwellings and homeless in the old city, Fort Area on one side and the major banks of the world and other offices headquartered on the other side. The chaotic pavement dwellings and their physical proximity to the central business district of Bombay are representative of the survival mechanisms of the urban poor; these dwellings blurred the physical segregation inherent in the colonial Bombay (Shaikh 2014, 499). In independent India, the first Act⁵⁴ prohibiting begging came into force in Maharashtra in 1959, later amended to be called the Bombay Prevention of Begging Act⁵⁵, which not only criminalized begging but also the homeless urban poor⁵⁶. The post-independence decades in Bombay created social and political situations where the same 'space' was shared, understood, and used differently by different sections of the population. While one section is static, monumental in its presence, and exploitative of the resources of the city, the other, the one that this study is interested in, sprawls along the transport lines, into any interstices and crevices it finds in the same city.

Mid-20th century Bombay emerged and established as an important industrial city, dominated by textile industries. However, industrial prosperity of the city faced tremendous challenges due to the failure and consequent shutting of textile mills. There was a total of 64 small and big mills operational in 1941 (Phadke 2009, 70). These mills were set up at prime locations of the city occupying a sizeable amount of land. The mill workers' conflict with the mill owners reportedly started primarily due to the issue of payment of bonuses in 1941. Between 1946 and 1950, Phadke notes, mill owners agreed to pay off only two months' salary as bonus as against the demand of three months by the workers.

⁵⁴ The Act borrows heavily from the text of the first law to prohibit beggary in India, Vagrancy Act 1869 under the British rule.

⁵⁵ The Act itself will be discussed in the context of a litigation to amend it, in the next chapters.

⁵⁶ See Ramanathan, 2008 for an analysis of the BPBA.

The main reason for reduced bonus as stated by them was the decline in profits. The matter went to the court⁵⁷ which ruled in favor of the owners. This led to massive discontent among mill workers. On this background Socialist Workers Union's call to strike work resulted in a six-month long strike which was largest after 1928 strike in the city (Bakshi 1986, 12). Finally, the owners had to agree to the demand of the union and the strike was called off. When planning was officially adopted in India in 1951, the focus during this time was the development of small and medium scale industries and fostering public sectors. This had however not fetched desirable results especially in textile industries as the textile export had shrunk to a mere 60 crores (D'Monte 2002, 97).

From the 1960s onwards, the textile industry started to decline and other industries flourished. Industrialization in the state of Maharashtra had taken a different turn. As a result, the number of industrial units increased to 16,594 in 1981 from 8,233 in 1961, while workers in the organized sector increased from eight lakhs in 1961 to 12 lakhs in 1981 (Phadke 2009, 97). This progress in both industrial units and organized work force was indeed due to the development of various industries while the textile industry moved to its end. Various studies have revealed that the owners of the mills were primarily responsible for the decline of the textile industry (D'Monte 2002, 156). Outdated machines, anti-worker policies, hyper-commercialization of land and excessive dependence on manual production led to the decline and death of the mills. In 1962 the total numbers of mills were 70, where 9594 workers were employed, while 90 artificial silk producing companies employed 20815 workers — of all the workers in various industries in Bombay nearly 46.93% used to work in the textile industries (Municipal Corporation of Greater Bombay 1964). Rising demands for nationalization of textile units had led to the creation of National Textile Corporation (NTC) in 1968 (Bakshi 1986, 102). Of 70 mills in Mumbai 57 mills were nationalized under NTC. The State government also overtook many mills through various corporations it established⁵⁸.

Language groups	1961	1971	1981	1991
Marathi	17,75,114	25,07,478	37,89,698	41,34,671
Hindi	3,30,529	5,96,959	10,03,672	15,59,928
Urdu	4,01,616	6,47,976	7,78,504	11,99,441
Gujrati	7,92,771	10,53,418	11,89,507	13,79,000

Table 3 - Language groups in Bombay, Source: Census of India Reports (GoI)

⁵⁷ See, 1961 AIR 977, 1962 SCR (1) 105, The Prakash Cotton Mills ... vs The State of Bombay.

⁵⁸ See, Bakshi, R. 1986 for details on the politics of privatization of mills.

Census Year	Migrants from different states in Mumbai
1961	2,67,132
1971	33,72,384
1981	42,29,276
1991	37,02,894

Table 4 - Inter State Migrants in Mumbai, Source: Census of India Reports (GoI)

Census Years	Total population	Decadal growth (%)
1961	41,52,056	NA
1971	59,70,575	43.80
1981	82,03,405	38.7
1991	99,25,891	20.41
2001	1,99,78,450	50.31
2011	2,07,48,395	3.16

Table 5 - Decadal Growth of Population in Mumbai, Source: Census of India Reports (GoI)

A Growing Metropolis

The massive migration to Bombay in the post-independence decades saw a huge rise of working classes which contributed to the creation of the city — laborers, construction worker, masons, carpenters, blacksmiths, and other skilled workers from all over the country moved to Bombay. This explains the rise of the population from 1.8 million to 2.9 million between 1941 and 1951. “In 1971, the slum population alone was 1.25 million, more than half of the city’s population but occupying less than 2525 of its 43000 hectares of land used for housing (Patel 2003, 61).” The concentration of ownership and high real estate prices reinforced these inequities. The number of homeless in these decades is still uncertain⁵⁹.

Land being a marketable commodity in Bombay, has always been presented as a scarce resource. This led to private players hiking prices and demolition of encroachments⁶⁰, be it slums, or homeless

⁵⁹ Census of India began counting urban homeless only since 2001 when homelessness found place in the census reports.

⁶⁰ See, Patel 2003 for detailed usage of land by urban poor in Mumbai to build their settlements.

groups. In the 1950s two kinds of responses from the government were observed. One, an attempt to improve and upgrade services for slums and the urban poor through inclusive policies, and two, proposing relocation of slum and pavement dwellers to permanent structures. An amendment in the Bombay Municipal Act in 1954⁶¹ was introduced to make this possible but no political will was shown to implement the project. In 1956⁶² the central government approved a slum clearance project, Bombay being one of the six pilot cities. It was only in 1972⁶³ however that the state government created a Slum Improvement Board to start acting on the central government scheme. As central assistance had dried out by then, the state decided to finance the scheme itself. In 1976, the state found 1680 slum settlements with a population of 2.8 million. Between 1976 and 1986, the government policy was to ensure no further poor migrants entered the city. The police were employed to evict the urban poor until 1985 (Das 2003, 210). The Supreme Court then ruled that the pavement dwellers

⁶¹ In 1954, two new sections, 378A and 378B, were added to the Mumbai Municipal Corporation Act. The corporation had the right to order homeowners to make the buildings suitable for human habitation by making changes in them. Not only this, the Municipal Corporation was also given the right to demolish the buildings of the homeowners who did not follow the orders. The criteria for determining whether a building is fit for human habitation were laid down under Section 378 D. The area in which the buildings were to be demolished was declared as clearance area. The area to be redeveloped was declared as redevelopment area by the Municipal Corporation. The future of the Dirty Settlement Improvement Scheme depends on the success of the Municipal Corporation in making alternative arrangements for the residents to live in or near the clearance area if their settlements are demolished.

⁶² The first national symposium on urban poor and slum clearance was organised in 1957 by the TISS, Mumbai, as an initiative to discuss this project. Many stakeholders of slums were invited to discuss various aspects of slums in the country as also people from civil society were called but also sociologists, economists, architects, secretaries, and chief engineers of all the metropolitan cities. Many tried to define slums with the help of dictionary and other resource materials. Many words were common in the definition put across viz, unfit for human habitation, dilapidated, dark and congested buildings. In Bombay the word slum incorporates all the above characteristics, said the then municipal commissioner P. R. Nayak. He further said that rural migrants come to Bombay in search of livelihood. They use bamboo, plastic, jute and other waste materials to construct hut for shelter. They occupy open land, before occupying it they never bother to enquire or scrutinise as on whose land they are building their huts. Thus, unauthorised slums and encroachment takes place in the city. Report of the Seminar on Slum Clearance, 1958. May 14-19. Bombay: Indian Conference of Social Work. 232. Municipal engineer N. V. Modak presented two essays in the symposium. He suggested that dilapidated buildings and chawls should be demolished to make new buildings where people should be accommodated. If it is not possible then slum dwellers should be relocated to some other place with proper housing. According to Modak, there were no guidelines for construction of buildings in the city till 1910. It was in the year 1910 that the city corporation brought improvements in the building's construction regulations. Next improvements in the regulations were brought in the year 1919 and 1946. British acts were the model for any improvements in the regulation. While the question of amending the Mumbai Municipal Corporation Act in 1939 on the lines of the British Housing Act of 1936 was under consideration, it had to be canceled due to the outbreak of World War II. After the Second World War, the situation in the country as well as in Mumbai changed. Faced with the problem of unprecedented housing scarcity in Mumbai, there was an urgent need to provide shelter to the refugees who came to Mumbai after partition. The Mumbai Housing Board built about 16,000 flats for workers and low-income groups and 25,000 flats for those displaced by partition.

⁶³ "A report was submitted in 1970 by a joint committee appointed by the Maharashtra Legislature, keeping in view the draft law passed by the Parliament in 1956. The bill prepared based on its recommendations was introduced in the Legislature on March 20, 1971. After its passage on 31st August 1971, and after the President's approval, the Slum Areas (Improvement, Clearance, and Redevelopment) Act came into effect in the State of Maharashtra. Maharashtra is the first state in India to enact such a law." With Maharashtra being the most urbanized state compared to other states and Mumbai having the highest number of slums, it was inevitable to enact such a law. As huts were built on the land owned by the Mumbai Municipal Corporation as well as on privately owned land, the task of inspecting them was entrusted to the Additional District Collector of Mumbai. If there were 25 or more huts without basic civic amenities in an area, the Additional Collector was given the authority to publish a notification in the Gazette that it is a slum. As a result, residents of areas declared as slums were entitled to basic amenities like electricity, water supply, sewerage, and toilets. A lot of homeless groups found homes due to this.

had as much right to stay in the city as the middle and upper classes⁶⁴. Following this the state was forced to revive the policy of improving slums and living conditions for the urban poor. The lack of legal tenure⁶⁵ has raised the importance of the right to physical space in the city. In Bombay, a sizable portion of the urban poor struggles to find and then keep a place to reside. It would not be an exaggeration to state that most of the urban poor are homeless and live on the margins, with an accepted state of deprivation in an informal, unsteady, and unprotected work life.

P. Ramachandran (1972) did a survey for BMC on the people living on the pavements and published his report. Ramachandran studied 2060 pavement dwellers in A and B wards of BMC. Of these, 1337 were males and 723 were females, most of them were migrants. These men were young, uneducated, poor, and hard working. All of them working as laborers with construction contractors were pavement dwellers. When the contractor completes the construction, he fires all of them. Once fired, they would stay in Mumbai with whatever job they could get but they were not ready to go back to their hometown permanently (Ramachandran 1972). Of all the pavement dwellers he studied, 20% were from Maharashtra. Hindi speakers from Uttar Pradesh were 19%, people from Tamil Nadu and Andhra Pradesh were 26% and Gujaratis were 15%. Ramachandran noted in his report - It was observed that they were living in the same pavements for past eight years. They could barely earn for two meals a day. They even lacked basic amenities on the pavements like proper bedding, etc. so they would use newspapers as bed sheets. Those who carried handcart would generally sleep on the cart itself. Many of them would cook their food on the street itself. Daily bathing was not only not possible but also unaffordable for them. In order to live on the pavements, they had to pay bribe to the police on a weekly basis. Even though the state government had ignored the Barve⁶⁶ committee recommendations, the Gadgil⁶⁷ committee had taken it into consideration.

⁶⁴ For details see, *Olga Tellis versus Bombay Municipal Corporation and Others*. 1985. SCC (3) 545.

⁶⁵ Tenure is “the mode by which land or space is held or owned by people. The legality and illegality of tenures is distinguished based on State recognition of the settlements.”

⁶⁶ The bilingual Bombay state had commissioned a study group under the chairmanship of the planner S. G Barve in 1958. However, the government did not heed the recommendations of the group. But the then BMC commissioner and member of Gadgil committee, S. Y. Shastri mentioned that the BMC’s development plan of 1965 was based on the Barve committee recommendations. The Barve committee laid emphasis on the land use based on planning. It suggested the division of the city in zones. The committee also suggested that the city should have underground railways to avoid traffic congestion; South Bombay’s roads should be expanded to accommodate the increasing load of traffic; the new buildings in the city should be vertical due to scarcity of land; Government offices should be relocated towards north in the city to reduce crowd in the south part of the city; Mumbai’s herd and slaughterhouses should be relocated away from city; and new Satellite Township should be planned. Barve committee recommendations were not taken into consideration in bilingual Bombay state due to conflict of interest between the then Chief Minister Yashwantrao Chavan and Finance Minister Jivraj Mehta. However, the state got autonomy in 1960 and the new development plans were commissioned. Central government promised finances under the third five-year plan. As a result of this, the state industry act known as Maharashtra Industrial Development Act was enacted under which Maharashtra Industrial Development Corporation (MIDC) came into being in 1962.

⁶⁷ The issue of regional planning in Maharashtra was considered at a meeting of the Urban Development Board chaired by the Minister of Urban Development on 20 and 21 February 1965 and a committee was appointed on 10 March 1965

As the city was expanding beyond its boundary and many suburbs and villages started getting merged into the city, the Gadgil committee was given the responsibility to carry out development plan for Mumbai, Panvel and Pune. The committee warned that the situation in 1965 was worse due to the “failure to act on the recommendations” of the Barve committee. The committee presented the percentage of migrants in the city from various states – 28.59% from Andhra Pradesh, Kerala, Mysore and Madras, people from north Indian states like, Uttar Pradesh, Bihar, Panjab, Delhi and Madhya Pradesh constituted 18.32%, Gujaratis were 18.84% and 22.63% from the Konkan (Ratnagiri). Before regional planning came into play, the construction of houses was solely done by private builders mostly for the middle and upper middle classes. For lower middle classes and the poor there were no options for housing other than to encroach open vacant land for building their huts.

The BCIT, Municipal Corporation and urban development department took initiatives to build houses for middle- and lower-income groups as scarcity was reported in the early master plan which was reiterated by the Barve committee. In 1961-64 the scarcity rose to 30% and it became necessary to demolish nearly 8630 dilapidated buildings by 1966. This demolition led to homelessness of more than four lakh families⁶⁸. Apart from this, there was need to build more than one lakh temporary shelters to accommodate the urban poor. The Gadgil committee noted that the existing urban planning act lacked planning provision. Instead, a new regional planning act was enacted⁶⁹.

The aim of planners and politicians was to decongest the city by moving industries to the outskirts and creating industrial towns. An east-west expansion to connect the city to Uran from Trombay was made using inspiration from the West of flyovers and bridges, a means to ease traffic⁷⁰. The plan ignored caste-class realities in the city and focused on improving amenities for the middle and affluent

under the chairmanship of the economist Dhananjayrao Gadgil to make plans for the establishment of metropolitan authorities. The recommendations of the committee are valid even today.

⁶⁸ The Gadgil committee recommended freezing the land prices and creating an independent land commission to regulate the land prices under government’s observation. Barve committee had laid emphasis on budgetary provisions of Rs. 16 crores per annum to build 20,000 houses. However, the state government spent only “Rs. 14 crores in the third five-year plan and Rs. 39 crores in fourth five-year plan” for housing in the whole state.

⁶⁹ Acting on the recommendation, the state government enacted the “Maharashtra Regional and City Planning act” in 1967. The act was amended 19 times in the span of two decades. The right to constitute a three members committee was given to the regional planning board to look into the matters of information and objections. The planning board earmarked the land for industries, parks, dairies, open spaces and zoos. Relocation of congested population and industries are also focused in the regional planning. It is also directed that if anyone was using land for any purposes other than farming should seek Municipal Corporation or council’s permission. If anyone wanted to develop land, fool proof planning should be presented and submitted for permission before the state government.

⁷⁰ ‘A Master Plan in Outline’ prepared by Albert Mayer and NV Modak in 1947 for the city which influenced planning of Bombay in the two decades following independence. See, N. V. Modak and Albert Mayer. 1949. Master Plan for Greater Bombay- First Progress Report. Bombay: Bombay Municipal Printing Press.

classes. The same set of ideas continued in the planning of the city and its expansion through the decades that followed. The 1960 division of the Bombay State into Gujarat and Maharashtra, with Bombay becoming the capital of Maharashtra, strengthened the idea of extending the city eastward. It was then crucial for Bombay to expand to its political hinterland, Maharashtra, rather than expanding northwards towards Gujarat. It was in this decade that planning perceptions attempted to create a new vision for Bombay - a vision which emphasized macro level planning and saw planning as a 'number game'. Planning for Bombay changed hands from the city administrator, patron and architect to the politician, statistician, and economist, giving rise to the Development Plans (DP) for the large Metropolitan Region of Bombay.

Of the three Development Plans⁷¹ for Mumbai city, the first DP for Greater Mumbai came to be prepared by the municipal government beginning in 1964 for 1967-1981⁷². Development and expansion of Mumbai's geographic region was one of the main highlights of this plan, so as to ease the concentration of the population in the city. The DP offered one room residences of 100 square feet per family as solutions to the housing crunch in the city⁷³. The draft report also labelled pavement dwellings of certain standards of 'habitable dwellings' as slums. The question of legality was not discussed in the DP 1967, thereby allowing legal status to a lot of settlements during the enumeration of housing. This plan determined and regulated legality and illegality of land by spatial modes of governance in the city with patterns of inhabitation being defined by the plans.

We already saw what ideas of planning have been in the city pre- and post-independence and what they were meant to do. The legacy of the colonial city was being re-shaped without resistance to the post-independence planning process. While independence had doubled the population of Mumbai between 1947 and 1961, it also bought narratives of nationalism, which meant making space for refugees and the urban poor with an immediate demand for infrastructure. The first DP for Mumbai was instrumental in reversing the discourse around urbanism by addressing, what Bhan (2009, 131) calls, "in the context of Delhi's Development Plans, 'the needs of the victims of partition and the poor who were working towards the making of the city and not burden them with mass poverty.'" The first

⁷¹ Mumbai has seen three Development Plans post creation of linguistic States - 1967-1981, 1991-2001, 2014-2034. They will be discussed in this chapter to understand spatial regulation by the State and later to understand legality, when the courts speak of evicting people from certain planned spaces in the city.

⁷² "Report on the Development Plan for Greater Bombay. 1964. Municipal Corporation of Great Bombay." Bombay: Government Central Press. Also see, 1965. "Municipal Plan: Some Important Points from the Development Plan for Greater Bombay." MARG: 21-29.

⁷³ "Development Control Rules for Greater Bombay for the Development Plan." Accessed here: "<https://portal.mcgm.gov.in/irj/go/km/docs/documents/EODB/BuildingCircular/DCR%201967/The%20Development%20Control%20Rule%20-%201967.pdf>" on 14 August 2020.

DP for Mumbai resulted in the creation of the MMRDA⁷⁴, whose role was to ‘develop the city of Mumbai according to the plans’ of the Government of Maharashtra, which remains a key player in shaping Mumbai even today.

On June 25, 1975, “Emergency declared in India by the then Prime Minister Indira Gandhi suspended constitutional rights and freedoms of all people. This led to press censorship, torture, arrests, demolition and evictions of slums and urban dwellings, and stories of forced sterilization (Tarlo 2001, 114).” Tarlo argues that the official narrative of the Emergency was that of national security and development in the interest of the public⁷⁵. The opposing narratives to Emergency were that of Indira Gandhi’s attempt to suppress opposing political parties, violence, and fraud in elections, etc., which had led to nation-wide protests. My interest in this thesis is in the Emergency’s emphasis on urban slum clearance in the name of development. While most of the reports and policies post-emergency have focused a great deal on Delhi and North India, the evictions and demolition of urban spaces took place across Indian cities to clear unwanted people. Mumbai was no exception⁷⁶. People were required to produce certificates of proof of vasectomy in order to be rehabilitated post-evictions (Tarlo 2001, 124).

The Shah Commission⁷⁷ which investigated the Emergency after it ended in 1977, described the mass evictions of urban poor as ‘sickening’ and ‘an unrelieved story of illegality’. Like the Turkman Gate⁷⁸ in New Delhi, the Janata Colony slums were demolished pushing an estimated 70,000 people from Mumbai to the uninhabitable Trombay suburb; beggars and homeless were rounded up and sterilized, in keeping with Sanjay Gandhi’s diktats⁷⁹. It was here that the imagination of the city shifted. Demolitions became a part of national mission to create civilized urban spaces, and the urban poor became ‘illegal’ in that sense. They had no place in the narrative of development.

⁷⁴ “The MMRDA was set up on 26 January 1975 under the Mumbai Metropolitan Region Development Authority Act, 1974.”

⁷⁵ Indira Gandhi’s speech at the “Red Fort on 15 August, 1975” as cited in Tarlo 2001.

⁷⁶ For details, see, Patrick Clibbens (2014). 51-66.

⁷⁷ “The Janata Party appointed this commission under Section 3 of the Commissions of Inquiry Act 1952, headed by Justice J C Shah, former Chief Justice of India.”
For details see, Kumar, V. and Agrawal, S. P. 1977. “Volume 15, Part 1 of Committees, and commissions in India.” Concept Publishing Company. 1993.

⁷⁸ Tarlo, 2001 described Turkman gate, a local resistance to family planning and demolitions in Delhi, as a brutal massacre of innocent citizens.

⁷⁹ See, Koppikar, Smruti. 2018. “Bombay in the Time of Emergency. Hindustan Times, June 27. <https://www.hindustantimes.com/mumbai-news/bombay-in-the-time-of-emergency/story-APIsPWfZI7bu7uMq49RWEO.html>.”

The emergency of 1975 gave rise to conflict and tension among the people. Communists in Mumbai started mobilizing workers against the state and demanded their dues. Protests and strikes were an everyday phenomenon. Workers were on streets or at home than in assembly lines of the mills. On this background the local political party, *Shiv Sena* founded by Balasaheb Thackeray (1926-2012) in 1966, came to prominence. It not only supported the emergency but also successfully countered the communists' mobilization. Thackeray used linguistic divisions to provoke the Marathi workers that they (Marathi speakers) were being discriminated against and South Indians were given priority in employment. This led to the Marathi youth joining *Shiv Sena* in huge numbers. The party gained popularity in Mumbai due to the provocative writings of Balasaheb Thackeray in *Marmik*⁸⁰ and the catchy slogans like '*uthao lungi bajao pungli and jala do jala do lal bajra jala do.*' Although the owners of the mills were non-Marathi the workers in the mills were largely Marathi. Workers' affinity towards *Shiv Sena* was precisely due to the reason that the party was led by a Marathi speaker, on Marathi issues, for Marathi people against south Indians and communists who were projected as the biggest foes of the Marathis.

Prabodhankar Thackeray, through his book *Uth Marathya Uth* (1973), twisted the concept of 'we' and 'they' given by Mahatma Phule and used it to build the politics of his son. He used 'We' to refer to the Marathi speakers and 'They' to the non-Marathi, i.e., south Indians and communists as against Phule's 'We' that referred to non-Brahmins and 'They' to the Brahmins. Prabodhankar made south Indians (people from Karnataka, erstwhile Andhra Pradesh, Tamil Nadu and Kerala) responsible for the rising poverty and slums in Mumbai. They migrated to Mumbai and Maharashtra in large numbers and allegedly captured government and semi-government offices and companies. '*They are the one who are into smuggling of gold and illegal activities. Also, they sell illicit liquor; sell anything illegally on foot path, attack Marathi people, eve tease women,*' reads Thackeray's book (Thackeray 1973). The *Shiv Sena* grew based on the 'we' versus 'them' divisive politics, playing on the insecurities of the unemployed local youth. When the party established itself, the core of its ideology shifted — 'them' became the Muslims, specially, Bangladeshi migrants. Raj Thackeray repeated the history of founding years of *Shiv Sena* when he launched his own political party departing from his uncle, Bal Thackeray. For him, 'they' became Hindi speakers as against *Shiv Sena*'s 'they.' The regional politics of the *Shiv Sena* complemented and supplemented the nationalistic project of development which made 'illegality of urban poor in city spaces' a 'democratic framework' embedding the political landscape of the city with development narratives (Eckert 2003, 196). The

⁸⁰ The *Shiv Sena* mouthpiece.

post-emergency years shifted towards micro control and local politics taking lead in negotiations for building the city.

It was in 1970 when the Bombay government felt the need to implement the rejected recommendations of the Barve committee of creating satellite cities⁸¹ around Mumbai that the City Industrial Development Corporation (CIDCO) was set up. CIDCO began the project of creating New Bombay in a bid to divert this growing population from Mumbai to the new city⁸². A major critique of this plan which was in fact proven true decades later, was that New Bombay would merely extend the jurisdiction of the city without relieving the congestion and excess population. By the beginning of 1990, New Bombay⁸³ has become an extension to the jurisdiction of MMRDA and was on its way to becoming a twin city with its own identity.

Urbanisation only became a national agenda after 1985. Kundu (1984, 1520) urged policy makers to accept trends of urban growth and make provisions for the growing cities. The Ministry of Urban Development was set up for in 1985 for the time in India, recognizing the need and importance for urban development⁸⁴. With the economic crises of 1980s, followed by the political crises in India in 1990s⁸⁵ India was in a catch-22. In 1991, when the coalition government had exchange reserves to cover for only two weeks of imports, India had to accept the offer from the International Monetary Fund and begin the liberalization process to open up the economy (Bhan 2009, 138).

The urban poor are consistently treated as a ready-made vote bank for respective constituencies. Politicians allow new groups to arrive and then protest increasing population and crime in the city, making the urban poor an obvious criminal. Protests against evictions have led to legalizing 'illegal' settlements guaranteeing rights of people to stay but no rights for better housing and services. "The new perception of Independent India's first city focused the attention of the authorities on a capitalist city, which was lain over with ideas of the colonial city, marginalizing the poor." The city's improvement through removal of homeless and urban poor to the outskirts was and continues to be inhuman in the way it is implemented. In the words of Nigel Harris (1976, 41), "The act of preparing

⁸¹ See, Correa, Charles, 1987. Planning for Bombay. In Charles Correa. Singapore: Concept Media Ltd. 46-51., for details about the planning of New Bombay. Accessed here: <https://archnet.org/publications/7082>.

⁸² See, Shaw 2004.

⁸³ New Bombay/Navi Mumbai spreads across Thane and Raigad districts in Maharashtra and is connected to Mumbai via rail, road and water routes. The Navi Mumbai Municipal Corporation is the planning and administrative body for the city.

⁸⁴ Citation is taken from the "Ministry of Urban Development" document of 2010. "The Ministry of Housing and Urban Affairs" now deals with urban development in the 2019 cabinet.

⁸⁵ India had six Prime Ministers between 1989-1998, a series of short-term governments that led to economic and political instability.

the plan is reduced to expressing rather a symptom of the problem, not a means to overcome it. Preparing the menu continually replaced the act of eating the meal.” The ambiguity of this relationship, between diagnosis and prognosis, is playing itself out today, as the city is slithering down the same ladders that were intended to prop it up!

Re-forming the City: 1991 - 2021

The economic reforms of 1991 are briefly three key game changers - removal of trade restrictions through liberalizing the economy and opening the market for Foreign Direct Investments, privatization of sectors that were solely public enterprises and decentralization in order to reduce the public sector investments in the economy⁸⁶. While praised for consistent increase in GDP since the 1990s, critics have raised questions over increasing inequality and poverty, and the concentration of wealth to a small section of elites. The economic reforms brought with it a new shift in the discourse on development and governance, political, legal and in everyday life. How did this affect Mumbai and its urban poor?

Post 1991, Mumbai became the first city to open the markets across sectors — manufacturing, and services. The neo-liberal policy also saw brand new city development plans for Greater Mumbai. With the popularity of identity movements like Shiv Sena and its sons-of-the-soil politics, to national mobilization towards religious identities in the late 1980s (Hansen 2001, 170) and creation of new cities with the aim to expand and decongest Mumbai, there was a shift from the paradigm of welfare state. The liberalization of the economy brought a stream of workers across sectors to the opportunities that the city offered. Coupled with the “74th Amendment of the Constitution of India” in 1992⁸⁷, “the power to take decisions on the city’s economic development shifted to municipalities”, paving the way for BMC to become one of the richest and most powerful municipalities in India⁸⁸. This shift was evident in the Second DP⁸⁹ for Mumbai (1991-2001), which was meant to chart the city’s development for the next two decades. The plan continued the usual emphasis on ‘decongesting the city’ but left a backlog of over 2 million unaccommodated (Nallathiga 2009, 143). The DP 1991 reports were prepared in 1984 but published only in 1991, with details of street-wise development, without any commitment to public consultations.

⁸⁶ See World Bank Reports. “India: 1991 country economic memorandum.” www.documents.worldbank.org. for detailed background to the liberalization process.

⁸⁷ See, The Constitution (74th Amendment) Act of 1992.

⁸⁸ The BMC budget for 2020-2021 with an estimate of 33, 400 crore rupees is the highest for any Indian city in the year.

⁸⁹ The Second DP was originally prepared for 1981-2001 but was only sanctioned in 1991 and later extended till 2013.

Like the DP 1967, DP 1991 has no information about informal settlements or maps. The planners clearly avoided any reference to land use in the city by various groups and the poor were represented as migrants and sources of urban anxiety. The homeless, the pavement dwellers were completely ignored in the plan, while addressing the question of public housing. The neighborhoods listed in the pages created a hierarchy of settlements based on real estate prices of land and therefore a measure of socio-economic status of the residents. Around this time Residents Welfare Associations (RWA) and Co-operative Housing Societies (CHS) started to emerge in Mumbai, which were included in the plan quickly (Das 2003:220). The RWA and CHS were transferred the responsibility of maintaining and improving conditions of their localities (*ibid.*), making them more powerful in the years to come.

The DP 1991 made a political shift in the late 1990s. From being a government/public sector led process, planning now shifted to involving the private sector, a critical reform for development of the city. Public Private participation was one of the objectives of the plan. Land was being sold to private players at much lower rates than those prescribed by the government, thus ending the state's control⁹⁰ on land (Kundu 1984, 1521). Ong (2006, 112) describes this phenomenon as the 'infiltration of the market logics into politics' or perhaps of politics running by market logic. The DP 1991-2001⁹¹ (later extended up to 2013), also needs to be read in the context of JNNURM (2005), which focused on "urban infrastructure and governance and basic services to the poor". Mathur (2009) calls the JNNURM as one of the most critical shifts in India in its approach towards urbanisation, understanding the role of cities in the growth of the economy (Mathur 2009, 39). The JNNURM⁹² had proposed that cities will be contributing to 65% of the GDP if infrastructures were in place. With a vision for urban change within the context of political, economic, and legal modifications, the city has evolved into a national agenda. Considering the quick expansion of Mumbai's outskirts⁹³, promotion of Special Economic Zones (SEZs), and rise of middle and upper class gated communities, new spatial politics emerged.

⁹⁰ One instance is the 45-acre Mumbai Beggars' Home being sold to private builders to create a gated community in Mumbai's suburbs. The beggars' home was shifted behind the brand-new gated colony, to a congested 3-storeyed building with grills and no space for any kind of rehabilitation activities, as prescribed in the BPBA, 1959.

⁹¹ "Municipal Corporation of Greater Mumbai. 2013. Sanctioned Revised Development Plans for Mumbai 1991. Mumbai. Accessed on 19 April 2020: <https://portal.mcgm.gov.in/irj/portal/anonymous/qlRevisedDevelopmentPlan>"

⁹² The JNNURM was closed in 2014, following change of government at the center and replaced by "Atal Mission for Rejuvenation and Urban Transformation (AMRUT) which was launched together with Housing for All (Pradhan Mantri Awas Yojana-Urban) for securing affordable homes for urban poor and building 20 million homes until March 2022."

⁹³ Mumbai's share of allocations in the JNNURM with 39 approved projects got a total funding of Rs. 8146 crores (Rs. 814 million) out of which one-third of the contribution came from the center. Mumbai received the highest funding among the 60 cities selected for the mission. (Sivaramakrishnan 2011).

The DP 1991 extended the boundaries of Bombay to New Bombay, adding up more area to the MMRDA's jurisdiction with the aim to build more housing for the homeless (excluding homeless/squatter houses), parallel with the JNNURM's "Basic Services to the Urban Poor (BSUP)." This allowed the homeless an upgradation in their service irrespective of the 'tenurial statuses' of their 'homes.' On the one hand this led to more attention to the needs of vulnerable communities, while on the other making it politically challenging to secure their rights to the city space they called home. With the announcement of the third DP 2014-2034 for Mumbai, the inadequacies of the previous plans seemingly continue since the norms for urban housing and facilities for urban poor remain the same, and the aims of the previous DPs not met.

The following tables are used by the DP⁹⁴ (2014-2034) and Economic Survey of Maharashtra⁹⁵ (2019-2020) to speak of Mumbai's growth in the decades, and how it should determine policy for the city. Though its data goes back to 2001 and 2011, it remains relevant to understand the population spread in the city and the growth in the following 20 years. It is therefore practical and representative of the numbers that reside in a city of Mumbai's geographic size, "with a population density of 32,300 people per square kilometer (Economic Survey of Maharashtra 2020)."

Zone/Wards	Population 2001	Population 2011	Population 2034 (Estimated)
Island City (A to G)	33,38,031	30,85,411	28,10,235
Western Suburbs (H to R)	51,32,232	55,27,025	65,76,634
Eastern Suburbs (L to T)	35,08,096	38,29,937	45,62,842
Greater Mumbai Total	1,19,78,450	1,24,42,373	1,39,49,712
Source: Census 2001-2011 and Mumbai Development Plan 2014-2034.			

Distribution of Housing Shortage in Mumbai	
Households below poverty line in Urban	18,93,750

⁹⁴ Municipal Corporation of Greater Mumbai. 2016. "Report of the Planning Committee on the Draft Development Plan - 2034 for Greater Mumbai. Mumbai. Accessed on 23 January 2020: <http://www.udri.org/wp-content/uploads/2017/03/English-Report.pdf>."

⁹⁵ "Directorate of Economics and Statistics, Planning Department, Government of Maharashtra. 2020. Economic Survey of Maharashtra - 2019-2020. Mumbai. Accessed on 15 June 2020: https://www.maharashtra.gov.in/Site/upload/WhatsNew/ESM_2019_20_Eng_Book.pdf."

Distribution of Housing Shortage in Mumbai	
Households with Kutchha houses in Urban	7,887
Homeless Households in Urban	2,10,908
Homeless Households in Mumbai (Census of India)	57,416
Source: “Report of Technical Group on Urban Housing Shortage (2012-2017)” and Census of India	

The increased number of citizens participating⁹⁶ in maintaining Bombay’s public spaces contributed to their powerful political presence since the 1990s. The middle- and upper-class citizens controlling and regulating public spaces, created a new subset of lobbying for the city with newer demands, thereby shaping urban politics, specifically legality and housing. Several PILs have been filed by these residents, as will be described in the coming chapters, and they serve as evidence of the middle and upper classes’ political ascent in the city as well as of their eagerness to support initiatives that align with their notions of development. This I argue contributed to the ‘anti-poor’ planning of city spaces while not questioning the legality of spaces occupied by the affluent classes.

The key question that arises here is how do the state and the judiciary make a choice of what to include and what not to include in determining the ‘legality’ of a public space. In his theory of social inequality, Amartya Sen (1992) argues that the frameworks used to prioritize and construct categories necessitate the tolerance of inequality, and deem certain groups less important, and therefore marginalized (Sen 1992, 108). He argues that the maxim of ‘all beings are born equal’ is a detraction against human differences of gender, age, social and physical abilities and advantages and the need to emphasize on individual capabilities and freedom to achieve basic equity. Sen focuses on the need to improve the efficiency of social structures and arrangements to promote equity, freedom, and capabilities of individuals – including affirmative action, welfare policy and public health and education for all (Sen 1992).

Mary Douglas (1966) in her work speaks of order and disorder in the city, where the need for order implies restrictions on a set of groups that symbolize danger and must be guarded against. In culture and then through politics and law, ideas of demarcations, punishments and separations play a role in

⁹⁶ An example of citizens trying to beautify the city in collaboration with the state can be understood through, Deshpande, Shrinivas. 2020. “Mumbai’s Footpaths: Citizen Participation Can Make a Difference. *Hindustan Times*, Feb 15. Accessed: 10 May 2020. <https://www.hindustantimes.com/mumbai-news/mumbai-s-footpaths-citizen-participation-can-make-a-difference/story-AjQoD84hZKmnUJq7jF60CP.html>”

attempting to keep the system of exclusion alive. For Scott (1998, 48), state institutions create categories of legality and illegality with the force of law. He argues that the authoritarian nature of the democratic state standardizes the values of an urban community and the public acceptance of these rules, gives the state the authority which may or may not be legal (Scott 1998). Here, I address the issue of how, together with "citizens and civil society engagement," the law and the state have formed the city as well as the politics of the urban poor throughout the decades since the adoption of the PILs (1975-2020). How have the interests of urban poor people and their claims to the city been impacted by the rights group's inclusion of the judiciary in the spectrum of urban politics?

Legal, Illegal, Planned, encroached: Defining Concepts

With these sets of questions, I now present various categories or terms used in this chapter and in the thesis to define groups and their use of urban spaces: legal/illegal, planned/unplanned, encroached. These terms are chosen specifically, despite the limitations in their definitions, to understand how these very terms are used to navigate urban politics through the legal, economic, and even academic discourses. The words 'legal' and 'illegal' refer to spaces that are recognized by the plans and the state. The words 'encroached' or 'encroachers' are used to describe violations of social norms and control of spaces, irrespective of the legal status of the urban space. Separating the term 'encroached' from 'illegal' is a conscious decision that emerged from my understanding of these terms having different implications for the spaces and people that are being referred to, based on the context of law and politics.

Irrespective of DPs and schemes, the major shortfalls in housing and other services for the poor has remained constant in Mumbai. The urban poor therefore choose to build shelters in whatever space is accessible to them. Most of these spaces become 'unplanned' structures, because of the sheer impossibility of creating spaces of legal and planned settlements. The MMRDA's failure in providing housing spaces and the DP's refusal to develop these areas within the planning process, creates these 'illegal' spaces in the city. This illegality isn't exclusive to the poor, but is also created by the affluent sections, but the consequences for each have significant differences, which I will present in the later chapters.

Why and how do these illegal spaces emerge in a city like Mumbai? The population density, inadequate housing, land availability are undoubtedly the key reasons for their emergence. What role then do these Development Plans have in spatial structuring of the city? It is hard to determine the exact numbers of the 'illegal' colonies and structures of housing because of a lack of systematic

monitoring system and lack of definitions to understand these spaces. For the pavement dwellers, authorities surveying the population living in these dwellings can be tricky. While the survey may show the exact number of residents living in these dwellings, it will also make these spaces visible to the state and become open to eviction or other state actions against their ‘illegality’⁹⁷. Such spaces can only be mapped and understood in these times, when a demolition occurs or a scheme is announced by the state to regularize housing for the urban poor⁹⁸.

A spatial pattern in Mumbai’s urban homeless population is visible. These groups largely reside in the spaces close to their place of work or places where the cluster within the city has not been urbanized. For instance, old railway tracks, discarded bogeys of trains, under the flyover, by the pavements, to state a few. The 2011 census reports only 57,814 homeless in Mumbai, which activists and academics claim are a gross underestimation, actual numbers being over 2 lakhs⁹⁹. Could this be a deliberate attempt to hide actual numbers to regulate and control spaces by political and legal means? Roy (2009, 85) calls such techniques a “spatial mode of governance, where the state gets to decide and recognize the legal and illegal nature of people and their settlements.”

During the transformation of Mumbai into a city of dreams, both foreign rulers and Indian rulers were conscious of a peculiar geographical characteristic of the city. There were natural restrictions on the construction of horizontal buildings, due to the dense population and limited space, hence it became necessary to construct high rise¹⁰⁰ buildings (Madgaonkar 2008, 57). Towards the last decade of the 20th century up until today, a competition to construct 25 storeyed buildings and up has persisted. These high rises sell dreams of living in a sea facing luxury, like that of Manhattan, Singapore, or Shanghai. There is however a huge gap in what is said and what is done, by the ruling classes in Mumbai, as elsewhere. The densely populated South Mumbai houses all the public and private offices, where people commute for hours every day in local trains, buses, trucks, taxis, tempos, autos and private vehicles. Since 1947, there has been a demand to reduce the stress and waste of time in commuting by creating better housing and transport services but the absence of any political will is visible even in 2020. The dichotomy of allowing high rises in alliance with the builder lobby while

⁹⁷ Personal Interviews conducted between 2014 to 2018 with urban planners, architects, lawyers, academics, and activists in Mumbai working for the rights of the homeless and slum dwellers.

⁹⁸ While certain slums in Mumbai have been regularized, the pavement dwellings and other spaces occupied by the poor continue to be demolished every year, and people return to these spaces in a few weeks to rebuild their homes; and the cycle repeats.

⁹⁹ According to the “Report on Urban Homeless by the National Advisor on Homeless to the Commissioners of the Supreme Court”, the counting of homeless population has been a flawed process and highly underestimated due to the group’s invisibility during the day when counting is usually done.

¹⁰⁰ The prices of the building in Greater Mumbai have shot up from Rs. 65 in the 1970’s to Rs.100,000 in 2018, per square feet. Rates in 2018 are calculated on the annual average of the Ready Reckoner Rates of those areas.

being unable to provide sustainable housing for the poor, is stark and visible. In the process of its transformation from an economy of manufacturing and industry to an economy of travel, tourism and finance, Mumbai attracted more poor people than it could handle and became a site of uncertainty about citizenship.

Methodology: Sources, Methods, and Limitations

The data used to chart the history of Mumbai in this study was largely taken from various planning documents between 1988 to 2020, development plans, census reports, and reports of various public and private agencies, legal archives, PILs and petitions filed in “High Courts and Supreme Court of India” and their rulings. The data has been used to construct the history and evolution of Mumbai and the contemporary spatial structure of the city. The information is used to understand the formation of politics of the urban poor and various factors affecting their presence in the city. The sources were all comprehensive and covered a reasonable amount of Mumbai’s development over the past century.

The first limitation of the data is that it does not tell us the exact number of homeless residing in the city, how many are evicted every year and where do the homeless come from to Mumbai. This also suggests an underestimation of the numbers. It is not possible to tell how huge this underestimation is, since there is no data to compare it to. This, however, does not mean the study cannot arrive at any conclusions using the available data. The selected PILs, for instance, in the following chapters, are indicative of the trends in judicial response to urban poor, from what I deduce a pattern. The PILs are selected based on three main criteria; one, they are rulings by the Supreme Court and/or High Court of Bombay; two, they fall between 1980 to 2020; and finally, they are discussing matters related to the urban poor, specifically, the pavement dwellers, homeless, hawkers.

These sources and data have been used by officials, public and private, for policy formulations and other planning reports. Therefore, despite the limitations, it is crucial to engage with the data. Secondly, even though my sources and methods do not fully capture the politics of the urban poor and their spaces of negotiations of citizenship, it certainly is representative of the broader universe of the legal and political exclusions they face. While analyzing the rulings in case of certain PILs, one limitation I faced was in verifying the current standing of the cases and/or establish any contact with the petitioners. How does one find the petitioner, who is among the million in a city like Mumbai? Do they even live here anymore? This verification was not easy. The location of the petitioner was however verified, with the address provided in the petition. This helped in getting a clearer picture of the geographical location in the city and map the settlement/group that was affected by the court rulings.

I started this chapter with the aim to decipher what space means to the urban poor in Mumbai, what holds them within the center of the city, despite all the challenges. Being in the city's core entails being continually watched over by the government, the legal system, and civil society. The most obvious indications that Mumbai's growth has failed are the city's impoverished, and in particular its homeless population. Yet, they exist, their spatial patterns continue to be determined by plans, politics and the PILs. How do we assess the presence of these groups which are illegal, informal, unplanned, encroached or simply unwanted, violating civilized sensibilities? What does this tell us about the state's role in perpetuating poverty in the process of shaping the city? What role do the courts play in this narrative of urban development? I address these questions in the following chapters.

The Dynamics of Exclusion

The neo-liberal economy created new growth sectors, new technologies and new organizational capacities of various structures - and has also been contributing to the creation of new forms of exclusion in Indian cities. In Mumbai, these "forms of exclusions have been reproduced in terms of space, caste, class, and gender, turning it into a dual city, with extreme hierarchies." Sassen (1991, 205) has argued that in cities where manufacturing was the focus, a pyramidal classification was generated, a few at the top, a huge middle class, and an even bigger lower class. The new economy in Bombay created new forms of poverty and groups of people who are completely excluded from any kind of opportunity - Political, Legal and Economic.

The government's aim to control and manipulate the city's progress has often been met with protests and demonstrations by the urban poor and recently with mobilizations by urban movements. How do we assess exclusion? In this thesis, I ask why exclusion has become legitimate in a democracy and in understanding citizenship and judicial interventions. What makes it 'democratic' for some citizens to control others?

The modern city demands that people have a common collective identity. It is because of the failure to accept heterogeneity and concede citizenship to outsiders that multiple forms of exclusion emerge and become prominent. These are spatial, social, and political, as well as legal. The process of planning, legal responses and creation of exclusions affect particularly the urban poor and influence the form of urban politics, negotiations of citizenship. While challenging the irrelevance and failure of planning for the urban poor, "the developing city remains a critical site of engagement with a politics to address inclusion and right to the city."

I do not intend to argue for better planning or make public participation a part of the planning process or contest the legal interventions in the governance of the city and its politics. I aim to build a discussion around the need to engage with the law and the courts precisely because it continues to fail the urban poor, in a time when the courts have become increasingly relevant for urban politics and a site for resistance. In a city like Bombay, with historic and contemporary legacy, the courts have a marked control and influence to determine the limits of its people's lives. The courts have been participants in regulating illegality, determining socio-spatial order and thereby creating spatial patterns that impact the ideas of citizenship and create newer forms of exclusion.

The three DPs of Mumbai are largely failures, even as the third one is currently active, since the primary aim of attempting to prevent spatial divisions of the city's poor and the huge disparity in housing and other services available to them have not been achieved. I see this as a legitimate critique. However, government data presents a different picture. They argue that most of the urban poor live on land by occupying it 'illegally' in unplanned constructions, when the Urban Planning bodies approve all kinds of constructions. The state sees these settlements as encroachments. The preferences of the urban poor are public vacant land and the legal status of the land is directly determined by the planning process. While these spaces seem absent from the planned imagination of the State, they exist within the spaces of the planned city.

The common bias in urban studies is that the urban poor is often reduced to the 'slum dweller'. However, the spatial manifestation of the urban poor is much more. The homeless, which may include migrant laborers, beggars, children, senior citizens, men, women, trans people - is a terminology that implies rather ambiguous but large sections of Mumbai's urban poor. The inquiry in this thesis is therefore of this large group and into how to understand the processes of their exclusion. The investigations examine how specific urban actions and actors are labelled as "illegal" in comparison to others and what such labelling is intended to achieve. How does this impact resistance politics and urban politics generally? I therefore use the word 'illegal' often rather than words like unplanned or informal for the urban poor and the spaces they occupy in the city to present the consequences of their legitimate claims to the city with respect to different urban actors, the judiciary, and its responses. The urban poor represent and symbolize legitimate diversity in the city. Refusing to recognize their presence and aspirations by rejecting their spaces is delegitimizing their politics. In the chapters that follow, I will argue how the courts have repeated the process of delegitimization in alliance with the state and local governance, and other manipulations in the form of public interest. The history and continuity of urban plans and norms of urban planning are also part of this attempt

to determine the legality or illegality of the urban poor. Therefore, these categories will be analyzed to understand multiple forms of exclusions and I will present later in the chapters three and four how they become the basis for production of hierarchies and inequalities in urban citizenship.

2

Chapter Two

City and the Court:

The Politics of Exclusion in Contemporary Mumbai

...There are persons driven to beg for alms and food as they are starving or their families are in hunger. They beg to survive, to remain alive. For any civilized society to have persons belonging to this category is a disgrace and a failure of the State. To subject them to further ignominy and deprivation by detention is nothing short of dehumanizing them. It is here that the Courts must step in and recognize the defense of necessity. Judicial notice must be taken of the fact that the poor will not have access to quality legal service when accused... Prevention of begging is the object of the said Act¹⁰¹... The Court must realize that embedded in this object are twin goals - Nobody should beg and nobody should have to beg...¹⁰².

‘The accused was found begging’, said the Metropolitan Magistrate, ‘by raising his front paws at the passersby’, attempting to describe the act of begging. The ruling in *Ram Lakhan*¹⁰³ by the High Court judge called out the appalling way ‘the hands of a human’ were described by the lower Court. For the homeless, begging on days when employment does not generate income or there is no work available in the city, remains the last resort. Like other poor sections in Mumbai, homeless are also largely service providers in the city - rag pickers, waste recyclers, domestic help, rickshaw pullers, construction workers and laborers - men, women, and children. In the *Ram Lakhan* case, which remains revolutionary in legal history, for the first time a Court recognized the right of an individual to ask for money or food, in dire circumstances. The High Court of Delhi drew comparison between “begging individuals and the solicitation of funds by charities”, and stated: “...No rational distinction can be made between the message involved, whether the person standing in the corner says, ‘Help me, I am homeless’ or ‘Help the homeless (*Ram Lakhan* 2005, 5).”

The people who are arrested comprise mostly of Mumbai’s *beghar*¹⁰⁴, the homeless. Most cities have their share of the homeless and Mumbai more than most. The Society for Promotion of Area Resource Centers (SPARC) in its report (1985) notes, “An Englishwoman who lived in Bombay in the 1920s wrote her shock and distress at the numbers of people for whom pavements were the only home. The only real change since then has been in the magnitude of the problem and in official reaction to it (SPARC 1985, 3).” In 2022, the situation has only worsened. The homeless communities are radically

¹⁰¹ Referring to the “Bombay Prevention of Begging Act 1959.”

¹⁰² *Ram Lakhan vs State* on December 2005.

¹⁰³ The legal petitions that I refer to in this chapter and the next, I use short forms in the form of the name of the first petitioner for simplifying reading. For example, *Olga Tellis and Others versus Union of India and Others* (1985) is recorded as *Olga Tellis*. If I have cited the judgement records as in *Ram Lakhan*, I use the citation 137 (2007) DLT 173. If the records have not been accessible or referred, they are cited as Civil Writ Petition with the year of their filing. For instance, “*Koshish* (fn 9) is the 2397th petition filed in the year 2018. Hence it is cited as Criminal Writ Petition 2397 of 2018.”

¹⁰⁴ The Marathi/Hindi word *Beghar* means houseless. “It is the most used word by the urban homeless to describe their physical, economic, and social situation in the city. I will be using the word throughout the chapter to mark their vulnerability in their own words. I use the word homeless only to refer to the census category or to report its use in English when necessary.” The group does not represent slum dwellers and is not a part of the planning paradigm yet.

different from slum dwellers. They are not placed in settlements such as huts or *basti/vasti/wadi*¹⁰⁵ which spring up on vacant plots or public land. The homeless in Mumbai mostly reside in structures raised on the footpaths and pavements, using the walls and boundaries of building compounds that face the streets, as also the spaces under flyovers and bridges, outside the shops once the shutters go down at night, in public parks and grounds, railway and bus stations, and other such spaces in the city that can host them for the night.

In the legal system, the homeless¹⁰⁶ are both hyper-visible and invisible (Bhan 2016, 84). Invisible because of the denial of recognition and rights; and hyper-visible due to the increased scrutiny and surveillance of their activities. In *Manjula Sen vs Maharashtra State*¹⁰⁷, the Court was informed about the ‘tyranny’¹⁰⁸ caused by “the Bombay Prevention of Beggary Act” (BPBA¹⁰⁹) in the lives of the pavement dwellers in Mumbai. Yet, there has not been a single amendment between 1990 to 2022 to the law that criminalizes urban groups presuming their potential threat to the growth of the global city, and individuals for their ostensible poverty (Ramanathan 2008, 33).

In *Koshish and Others vs State of Maharashtra and Others* 2018 “in the High Court of Bombay”¹¹⁰ (Henceforth *Koshish*), the Court noted the arrest of 30 women and 19 children sentenced to detention in Mumbai by the Chief Magistrate, Nashik, under the BPBA 1959. The women and children were picked up stating they must make Unique ID cards, with no reasons for arrest or legal assistance through the hearing process and were detained for one year on charges of begging. The petitioners claimed to be working in the occupations of selling garlands, balloons, domestic helps, etc. in the city. The High Court was irate that the lower Court did not investigate whether the women engaged in begging and were transferred from Nashik to Mumbai via Pune in extremely unsafe conditions. The HC also noted that, ‘age, circumstances and conditions of persons must be noted before pronouncing judgements of being a beggar, as also factors of poverty and duress.’

¹⁰⁵ A *basti/vasti/wadi* is a settlement used to describe slums by the residents of these spaces. Slums refer specifically to the settlement as defined in the Maharashtra Slum Areas Act, 1971. “[https://sra.gov.in/upload/Maharashtra Slum Areas Improvement Clearance.pdf](https://sra.gov.in/upload/Maharashtra_Slum_Areas_Improvement_Clearance.pdf).” Accessed: 15 July 2018.

¹⁰⁶ For the purpose of this dissertation, I am using homeless as a category of analysis. Words like beggar, encroacher, pavement dweller are used when defining or describing a specific context in relation to a legal, social and/or political situation.

¹⁰⁷ Writ Petition No 1639 of 1990, in the High Court of Bombay.

¹⁰⁸ She cited the example of “a sixteen-year-old boy with disability, who worked as a shoe polisher, and arrested at Church Gate station while asleep during the day. His insistence that he was a shoe polisher and not a beggar fell on deaf ears. He was 16 at the time according to his narrative, but was entered 19 to send him on trial for begging. He had only one arm, and was presumed to be a beggar and arrested.”

¹⁰⁹ “It was in British India that begging was first declared a crime. The current law was updated as the BPBA 1959, and extended to 18 States including Delhi in 1960 (BPBA 1959). Today the law is functional across 24 states and union territories in India.”

¹¹⁰ CWP No. 2397 of 2018, in the High Court of Bombay.

The HC, while noting that “the due process of law was not followed by the police in arresting the poor women and children, and that they were kept in pathetic conditions at the beggar’s home”, released those sent to detention by the lower Court. Yet, “the petition filed by Koshish on behalf of the detained - is an exception. The petition is not about beggars or urban poverty.” It is the ‘ostensibility of poverty’ (Ramanathan 2008, 33) that determines the roles of the various authorities in governance and law and in how the poor are treated by them. The reasons for arrest were never clear. As a result, those detained could not decipher what was happening in their lives. It was further aggravated by the Court detaining them as beggars without an inquiry, with no investigation. A close study of the number of cases¹¹¹ that Koshish works on in the Mumbai beggars’ home reveals the large number of arrests of homeless people happening every day across Mumbai. The number of people acquitted and released after months of detention, through the interventions of the project reveals that the arrest and detention do not follow any prescribed legal procedures. All those released belong to the urban informal sector workers, who are picked up from the streets, as they take a break from work or sleep by a closed shop. Only those few who could prove that they are residents of the city or work in a specific person’s house or shop and provided contact number were eligible for release. Those who are released fail to get back their jobs, and are often associated as criminals, and instantly excluded from the possibility of reintegrating with the systems they were a part of.

Present day Mumbai is principally molded by judicial decisions, of decades of judicial activism and judicial governance. In a city of extreme poverty, laden with explicit inequalities, how does the Court determine the usage of space and define encroachers? Researchers (Ramanathan 2004, Dupont 2008, Bhan 2016, Bhuwania 2016) have studied the Courts’ imagery of the urban poor, as encroachers, as public nuisance, as dirty, urban mores, and the urban imagination of the ‘great Indian Middle Class’ (Varma 2007) and its anti-poor vocalizations towards building Smart Cities with little or no place for the poor (Nigam 2007). This chapter suggests an enquiry to understand how one needs to look at the urban homeless in the context of the city and exclusions they face.

A growing judicial presence in Mumbai is not just shown by the legal detentions. During the 1980s, numerous changes in the urban environment have been brought about through Public Interest Litigation (PIL) judgements that have come from the courts, when the PIL filed by Olga Tellis¹¹² and other rights groups like “People’s Union for Civil Liberties (PUCL)” requested the judiciary to

¹¹¹ The data was accessed with special permission from Koshish on the condition that names and details of the cases shall not be used for publication purposes, since there are private documents and could lead to conflict of interest between the project and the state office that they closely work with. For those interested in getting access to data for research can get in touch with the members of the team.

¹¹² “Olga Tellis & Others vs Bombay Municipal Corporation & Others. 1986 AIR SC 180.”

intervene in matters of the State's eviction orders of pavement dwellers. For this thesis, the Olga Tellis (1986) case remains crucial to understand why and how the judiciary came to be a major actor in shaping the city space. Contemporary Mumbai is shaped by these very results taken in "public interest" in what has been called 'judicial activism' and 'judicial governance.' In a city entrenched with poverty and inequality, how did the Courts get to decide that detaining the urban poor, on the suspicion of begging, and criminalizing them, is in public interest?

There are works that look for an explanation to this question. The Courts' "portrayal of the urban poor as encroachers (Ramanathan 2004), the use of nuisance laws (Ghertner 2008), portrayal of poor as dirty (Baviskar 2003), the new middle class that is anti-poor (Menon and Nigam 2007), new Indian cities when there is hardly any space for the poor (Chatterjee 2004) and the 'anti-poor' nature of the State and its systems (Rajagopal 2007; Bhuwania 2016)." This chapter builds on these explanations but suggests an alternate inquiry. I argue that to understand how the petitions that challenge decision of the courts and invite the courts to decide the fate of the urban poor, can result in multiple exclusions of the homeless in the dynamics of democracy.

It is important to not just look at the urban poor but the city. Within the debates on 'judicial activism' from the 1980s to 2020, I argue that the PILs are a tool designed to invite the Court into governance and I also assess the judiciary's efforts to make the city governable, for instance in the rampant evictions of the urban poor from across cities in India. Using Amartya Sen's analytics of exclusion through the capabilities approach, I show how the courts are a site to produce new forms and norms of exclusion. The new rationalities create an altered understanding of the city, the public, of poverty and the homeless, and of governance by introducing and highlighting ideas of encroachment, planning and development, law and order and crisis. These ideas are constructed based on a specific understanding of the city, marked by the failure of what the judiciary calls planning and development.

The first chapter described the problems in urban planning and its consequences on the city and its homeless. In this chapter, I present the Court's construct of the idea of space in developing the city, and how it defines public interest for the urban citizens. In the chapter, I will argue how the courts have repeatedly used the process of illegalizing, and created multiple forms of exclusion for the urban homeless. I will also argue in this chapter that the courts are a privileged site through which ruling classes determine the access to space in a city for the urban homeless, what Robert Moog (1998) calls 'Elite¹¹³ Preferences' in governance. Using this concept, I present how the courts and the ruling

¹¹³ Moog defines/describes elites/ruling elites as Members of the Executive, Legislature and Bureaucracy.

classes¹¹⁴ have built a popular debate around urban crises caused by the ‘encroachment’ and ‘illegal occupation’ of spaces by the urban homeless. A set of questions will lead us to the interrogation: In the law on beggary, how is ‘illegality’ understood by the judiciary? How does this ‘illegality’ become a matter of public interest? How are the arrests of the homeless being legitimized within the realm of Public Interest? How do we understand spatial exclusion with respect to the interventions by the Court in matters of the city and in governance?

I draw my data from archival sources, my main archives being PILs and the judgements on matters related to the urban poor that have had an impact on the lives of the homeless in Mumbai between 1985-2020¹¹⁵, “in the Bombay High Court or the Supreme Court of India”. At some necessary instances, I also refer to the rulings by the lower Courts and other relevant judgements made in the Higher Courts of other states. I focus on the rulings of the judges as well as the original petitions filed as PILs by the petitioners, and other persons involved in the specific case. Wherever necessary, I have also investigated reports by committees appointed by the Courts, government, research institutions and non-governmental organizations (NGOs) to investigate the concerned matter. I have also cross referenced this discussion with news reports and videos. I have drawn upon personal interviews taken between 2012-2020 with lawyers, petitioners, academics, journalists, activists associated with the cases or working on matters concerning the urban homeless.

This chapter has four parts. The first is the theoretical framework. I employ Sen’s (1999) capability approach in analyzing deprivation and the process of exclusion in democracies. I show how the courts become a point of advantage for the ruling classes in the structures of governance thereby producing new rationalities to legitimize exclusion of the urban homeless. I also present an analysis of governance, using Elite theories including works of Moog and others. Elite theory will help me ground the study to understand how the judiciary as a powerful entity impacts the city and its residents – urban homeless. The second part is a brief history of PILs in the Indian Judiciary, its evolution as a tool to access justice, and an assessment of the rulings of cases filed as PILs - all focused on the cases “within the jurisdiction of the Bombay High Court and Supreme Court”. The third part is an analysis of the pathological mechanisms of the lower Courts in the criminalization of urban homeless through laws like the BPBA 1959, primarily in Mumbai, but also across India where the State law is functional. The last section presents a debate on the impact of judicial intervention on how space is negotiated and thought about in contemporary urban governance in Mumbai.

¹¹⁴ Ruling classes may be defined here as the groups which control social, political, and economic agenda of society.

¹¹⁵ The Olga Tellis Case marks the first PIL in the judiciary on problems faced by the urban poor and has been extensively quoted; hence 1985 is taken as a starting point to look at the trajectory of PILs thereafter until 2020.

In a useful formulation, Amartya Sen argues that the literature on exclusion, if used to articulate and investigate important issues, would enrich “the approach of seeing poverty as the lack of freedom to do certain valuable things (Sen 2000, 5-6).” Sen argues that, “the concept of exclusion is useful because of its focus on deprivation and its relational issues. He further states that it is important to differentiate between exclusion which is a capability deprivation and exclusion which can lead to other deprivations (Sen 2000, 8).” For instance, “landlessness and lack of access to credit is a form of exclusion, that is, landlessness or lack of credit may not be an impoverishment but can lead to multiple forms of deprivations, like income poverty.” According to Sen, “there is a causal chain that explains the processes that cause poverty and exclusion – passive and active.” “Active exclusion,” Sen argues, “is a result of deliberate policy to exclude certain sections of people from specific opportunities. While passive exclusion happens when there is no deliberate motive to exclusion. And deprivation is the result of socio-political processes or policy frameworks (Sen 2000, 15).” Sen does caution the use of the concept of exclusion to understand all forms of capability deprivation. He argues that, “it is important to distinguish between the nature of the problem and the characteristics of a problem (Sen 2000, 28).” For example, “an individual’s failure to avail basic capabilities can have multiple reasons, including unfavorable inclusion and exclusion (Sen 2000, 29).”

“‘Social exclusion’ has been criticized conceptually as it obscures the format in which mainstream processes and institutions create and aggravate capability deprivation (see, Atkinson 2000; Geddes 2000; Green and Hulme 2005; Le vitas 1998).” This can be avoided by using the framework of Sen briefly outlined above. In the thesis, homelessness is viewed as capability deprivation¹¹⁶ of the urban poor in this dissertation. While exclusion due to social factors such as Caste and Class have been established as leading to other forms of deprivations, (for instance exclusion from being hired in certain jobs due to caste leading to economic impoverishments, leading to physical and mental deprivations), I build a case to extend this deprivation in legal spaces causing various capability failures. In looking at exclusion as an approach to poverty, it becomes easier to draw connections to legal spaces and how and if challenges are faced by the urban homeless as deprived groups (Sen 2000, 7) in taking part in the legal processes. This approach is useful, not only in aligning the work conceptually but also in its emphasis and focus on the relative aspects of deprivation in this study – the judiciary.

The Court and Exclusion

¹¹⁶ The inability to be able to live a minimally decent life, according to Sen 2000.

In this chapter I refer to the “Bombay High Court and/or the Supreme Court of India”, fully aware that the judgements are given by different judges from different places across India, with different opinions on the same matter at times. Therefore, the judiciary is referred to as an entity since one case law may be ruled by different judges over a span of years before a final ruling or judgement is passed. It also gives us a sense of the topics welcomed by the Court depending on the political context in the country and the trends in the judicial rulings.

“The Indian Supreme Court is among the highly powerful Courts of the world, and has a crucial role to play in granting and accessing rights as also for national governance (Kirpal et al 2000; Verma et al 2003).” “The Supreme Court and the higher Courts” of the nation have evolved and gained precedence in, as well as influence over policy making. How do judicial decisions align themselves to certain policy preferences or political ideologies? In a social and political system like that of India’s, one will have to look beyond the spectrum of the judicial structure to understand the positions and views of the judges that forms the basis of their judicial activism and interactions with other stakeholders in the process of dispensing justice. What is the role of the judges, an intellectual and professional group, in regulating or understanding exclusion vis-à-vis their rulings and judgements? How does one describe and analyze these developments in the judiciary and the activism around its positions over the years?

Robert Moog’s work on Elite-Court relationship is relevant here. Moog’s work refers to the strategic placement of the Courts between the Executive and the social forces, in order to shape democratic politics according to the intentions of the governing elites. Moog, in looking at lower and higher Courts in India between 1970s to 1990s marks, what he calls, ‘ambivalence of the elites’, towards the judiciary: the tension, the control, the pressure, and the access to the Courts, which has led to the creation of power dynamics between the judiciary and the elites, often impacting what kind of access and credibility is left for the poor in the judicial realm (Moog 1998, 411). What Moog fails to see is the elite nature of the judges themselves – their caste position, class status, access to the top universities’ educational institutions around the world – among other privileges. Does the bias of the judges’ social, economic, and political alliance impact the nature of their judgements? How can one study or measure this bias? While the question of measuring bias is beyond the scope of my thesis, it can be used to effectively build questions on the objectives of this dissertation.

Bottomore's (1966, 286) conceptualization of distinguishing 'ruling classes and political elite' is also useful here. For in the Indian society, the ruling classes and political elites are synonymous. Despite the multiplicity of elites in India, there is no cohesion in the ideas of social justice due to the caste system in the system of elites too, an inevitable social hierarchy based on the inheritance of caste status at birth and consequent privileges conferred according to this identity. Beri and Schneickert (2016) describe elites as 'holders of top posts in the power structure and important fields that influence decision making, and have an impact on the transformation/change of social norms, cultures, and structure (Beri and Schneickert 2016, 116). India and Indians cities particularly have been on a galloping rate of transformation since the 1990s, and so has the rate of social and political inequality (Sen and Dreze 2013, 28). This trend leads me to the assumption that the elites in India have had an impact on the development of the society and the tight, exclusive nature of elites in different fields (politics, legislature, judiciary, media, academics, etc.) has been one of the major reasons, structurally and procedurally, for the perpetuation and perseverance of inequalities. Most studies on elites in India have been in the context of political elites, including the classes that dominate India's political structure, Central and State legislature, political parties – that exercise political hegemony vis-à-vis their dominant/upper caste influence¹¹⁷.

Galanter and Robinson (2013) describe in detail about 'superstars and Grand advocates' in the Supreme and High Courts and their influence and connections with the rich, political classes, which offers them control in the litigation process – through formal and informal intervention in the processes of the Court. But he offers little or no reference or data on the background of the judges of these Courts, their command over governance and regulations or contributions to legal processes. It is a separate exercise to understand the ideologies of the judges and their politics with respect to the making decisions¹¹⁸. In "R D Saxena vs. Balram Prasad"¹¹⁹, the Court noted,

In our country, a social duty is cast upon the legal profession to show the people light by their conduct and actions. The poor, uneducated and exploited mass of people need a helping hand from the legal profession, admittedly acknowledged as the most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of their rights, statutory as well as constitutional.

¹¹⁷ See, Hempel, Fabian. 2016. An Update on the Social Background of Political Elites in India. Centre for Asia and Afrika Research. Humboldt University. Berlin., for a detailed discussion on the Political Elites in India and their social profiles.

¹¹⁸ A few newspaper and magazine articles like that of Saxena (2021), Buaria (2020), Chandrachud (2018) Bej (2017), Chandru (2015), etc. discuss the need for dissecting the judicial appointments and influence of caste in the appointments in the judiciary.

¹¹⁹ AIR 2000 SC 2912.

This observational order of the Supreme Court presents an idealist scenario and presents a monolithic image of the judiciary – invisibilizing questions of gender and caste – and the devaluation of the concept of social justice itself. It also ignores the impact such a matrix has on furthering exclusion of various groups that it claims to empower by its presence and conduct. I present this narrative by examples of Court rulings from 1985 to 2020, highlighting judgements related to the urban space and urban poor. On the scale of the city, I would also like to present the example of the “Atal Mission for Rejuvenation and Urban Transformation (AMRUT).” Launched in 2015 by Prime Minister Narendra Modi, the AMRUT is an urban policy initiative by the Government of India, is not very different from the JNNURM. Transforming from ‘World class Cities’ to ‘Smart Cities,’ the current policy seeks to build an urban that the previous policies aimed to achieve, but could not. The focus being on urban development, the keywords of the “Smart City Mission are – retrofitting (city improvement) and redevelopment (city renewal) – with an increasing role of private sector in urban development in India, a new mode of governance¹²⁰.” Within these policies is the implicit understanding for the need for a new form of governance that is inclusive and sustainable. This is the narrative much like what the Courts have to say about the failure of governments in protecting the city from crisis as described in detail in the next sections. In the process of governance, which is pointed at as the link to creating an inclusive society, urban transformation has led to multiple forms of exclusion – political, spatial, social, and economic. How do these forms of exclusion relate to each other? How do they produce exclusions in their different but convergent ways?

Public Interest Litigation (1975-1990)

Let me begin by presenting a brief history to the idea of PIL, followed by litigations that suggest the narratives set out by the Courts to govern and thereby make the city and its citizens be included. In trying to be inclusive, the processes of justice aggravated exclusion. I have argued in the chapter later how by doing so the Courts have reproduced failed governance and democratic form of exclusion in the city. It is what Rose and Miller (1992, 180) call “the moral forms of governmental rationalities within and outside the Courts that shape the city – ideas of order and efficiency that inform urban development and determine the politics of the city.”

By the end of the 1970s the Indian judiciary had marked itself as the messiah of the poor, defending their rights in the privileged spaces of the Courtroom. In the words of Rajagopal (2007), “social

¹²⁰ See <http://smartcities.gov.in>. Accessed 19 January 2021.

movements in India have been using the Courts for their struggle, the women's movement, the workers movement or the environment movement since the 1970s' (Rajagopal 2007, 158).” These groups as a matter of fact were invited by the judiciary by the innovation called Public Interest Litigation (PIL) as the Courts sought ways to make justice accessible. The PIL was developed by the Courts aimed to rectify failures in governance and can be said to have led to major transformations for the urban beginning in the mid-1980s: the relocation of industrial hubs outside the city¹²¹, the “use of compressed natural gas” (CNG) in public modes of transport¹²², mandates on urban waste management¹²³ to state a few. In the 1990s and 2000s, the Court presided over a series of PILs taking over the role of making judicial appointments¹²⁴, challenges to and investigations into corruption in government¹²⁵, recognized right to education, information, and food¹²⁶ and environmental policy¹²⁷ as well as democratic reforms in the access to information of the legislative members¹²⁸.

Upendra Baxi (1983, 213) has noted the role of the judiciary in the 1970s with Justice Bhagwati and Justice Iyer who championed issues of social justice leading to a large number of PILs being filed in the 1980s by lawyers, NGOs, journalists and advocates of Human Rights. The Courts' role in challenging offices of the state and local governments between 1977 and 1989 in cases related to human rights abuse and ecological sustainability have been widely publicized (Mate 2015, 197). Post 1990s until 2020 the Courts' role expanded with an emphasis on “civil and political rights” and to challenging the central government in matters of governance, corruption, and judicial freedom¹²⁹. What was the nature of these rulings and how did they shift over the decades? I will present the contours in the next section while assessing the PILs in the context of the urban homeless.

The engagement of the Courts in governance, directly and actively, is what is defined as judicial activism or judicial governance, aimed to aid its administrative as well as legislative nature (Sathe 2000, 238). Sathe argues that PIL transforms the judicial process from being adversarial in nature to being polycentric (Sathe 2000, 235), whereby the Court can evaluate contestations over rights and resources, which would otherwise be the work of an elected body in a democracy (Bhan 2016, 95). With the rising number of PILs since its inception to contemporary times, judicial activism has been

¹²¹ CWP 4677 of 1985.

¹²² CWP 13029 of 1985

¹²³ CWP 888 of 1996

¹²⁴ 4 SCC 441 of 1993.

¹²⁵ 1 SCC 226 of 1998, 3 SCC 1 of 2012, 9 SCC 516 of 2014 to mention a few.

¹²⁶ 3 SCC 666 of 1992, 1 SCC 719 of 2007, 5 SCC 294 of 2002, 4 SCC 399 of 2003.

¹²⁷ 2 SCC 267 of 1992 and AIR 2000 SC 3751.

¹²⁸ 4 SCC 399 of 2003 and 5 SCC 294 of 2002.

¹²⁹ See rulings by Justice Ahmadi, Justice Verma, Justice Misra, and Justice Anand.

a part of the discourse from academia to media. Muralidhar and Desai (2000, 164) argue that “PILs have become a part of the judicial function that dominates the ‘public perception’ of the judiciary.” When and how did the PIL become the mode of accessing rights? How have the urban homeless and the city itself been presented and affected by the PIL rulings?

Before I assess the three decades of this novel form of litigation, let me present a brief history of the emergence of the PILs in the first place – the reason and context being the Emergency in India¹³⁰. By Emergency I refer to the period from “1975 to 1977 when the then Prime Minister of India, Indira Gandhi, declared national emergency in the country suspending all rights to life and liberty across the nation”. Tarlo argues that the result of this was ‘press censorship, demolitions of slums and forced sterilizations’ (Tarlo 2001, 2). While the government’s narrative of the Emergency defended its need in the name of national security and economic stability in a post-war nation, Tarlo quotes Gandhi speaking on 15 August 1975, “stringent measures are bitter pills administered in the interest of the patient’s health”¹³¹. The Emergency was declared on the background of protests by students, trade unions and opposition parties on 25 June 1975, 13 days after the Allahabad High Court¹³² found Indira Gandhi guilty of electoral malpractices in the national elections of 1971. While the suspension of fundamental rights was notorious, the judiciary also worked in Gandhi’s favor (Khanna 2012, 150). The Supreme Court overthrew the High Court’s judgement. “When the Emergency ended in March 1977, Morarji Desai became India’s first non-Congress Prime Minister for two years until his government fell in 1979 and Gandhi was re-elected in 1980.” Khanna argues that “it is in these years that the ‘judiciary reversed some anti-democratic amendments to the Constitution and its failure to protect the rights during Emergency’ (Khanna 2012, 163).”

At this point, the courts positioned themselves as defenders of rights and ruled that neither the Parliament nor anyone else could alter the core elements of the constitution, including the fundamental rights. Baxi (1985, 113) states that “no other Court in the world has gone this far.” According to “Article 32 of the Indian Constitution, the courts have the power to issue orders or writs... ..for the enforcement of any of the rights conferred¹³³.” PIL was the new remedy that the Court had formulated to allow the marginalized to contact courts for justice. The process for filing a PIL was eased when Justice Bhagwati in *S P Gupta vs Union of India*¹³⁴ allowed individuals and groups not directly affected to represent the poor or those who cannot for various reasons approach

¹³⁰ For a detailed discussion on origin of PILs see, Chapter 1 in Bhuwania 2016.

¹³¹ Indira Gandhi’s speech from 1975, cited in Tarlo 2001.

¹³² 3 SCR 333 of 1975. 1975 AIR 865. *State of Uttar Pradesh vs. Raj Narain*.

¹³³ See “full text of Article 32 here: <https://indiankanoon.org/doc/981147/>”

¹³⁴ More popularly known as the judge transfer case. AIR SC 149.

the Court for justice. The recognition allowed not only ordinary citizens but also activists, NGOs, and media persons to speak for and seek justice for others. Justice Bhagwati noted, “When legal injury is caused to a person or group of persons, and such persons by reasons of poverty, disability or socio-economic disadvantage, cannot approach the Court, any member of the public can apply for appropriate direction, order or writ¹³⁵.”

It is here that the “voice of a progressive and empathetic civil society was formed, in and out of the Court (Khanna 2012, 165).” How that voice came to represent and what the Court orders did for the urban poor through some of these PILs will be examined later. Unlike other litigations, once filed, a PIL could not be withdrawn. A PIL is drawing attention to a problem by an individual or group, (Muralidhar and Desai 2000, 165). So how can the petitioner be held accountable and committed to a lengthy process? The Court ruled that a person cannot ‘withdraw a petition once filed in Court. The Court may take up the matter if it deems it to be in the interest of justice irrespective of the wishes of the petitioner’ (Muralidhar and Desai 2000, 166). This section in the PIL grants the Court a position of authority over deciding on petitions brought to its notice. Another landmark PIL called *Ratlam vs Shri Vardhichand and Others*¹³⁶ witnessed the Court compelling a statutory body, the Ratlam Municipal Corporation, to carry out its duty. In that case, the Court ordered a ‘writ of Mandamus’, which means to command – in legal terms the Court’s order to a public office to carry out a specific job held in public interest by the Court¹³⁷.

The writ of continuing mandamus was famously used in another PIL, in *Vineet Narain vs Union of India*¹³⁸ whereby a long-term system of monitoring implementation of judgements was set up. Muralidhar (1998, 8) argues that in this PIL the Court monitored the complete investigation such that it was widely reported and praised by the public for being a fair system. The legitimacy and relevance of the PILs and the judicial processes stemmed from these appreciations. This defined feature of the PIL process in the Court while on one hand protected the rights of the public but also controlled the roles of the institutions functioning under the executive. The Court takes up the role of fact finding by appointing committees or hiring experts in case of PILs. The testimony of these institutional actors

¹³⁵ Cited in Khanna 2012: 215.

¹³⁶ AIR 1622 of 1980.

¹³⁷ Justice Krishna Iyer ruled that “the Court will not sit by idly and allow municipal government to become a statutory mockery. The law will relentlessly be enforced... when people in misery cry for justice... The officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and legislation directs them to do are defied or denied wrongfully.”

¹³⁸ AIR SC 3386 of 1996.

is crucial and forms the basis of a Court's ruling. The Court therefore is involved in the 'production of knowledge' around cases filed as PILs (Bhuwania 2016, 109).

How do we locate the urban homeless in this history of public interest litigation and judicial activism? How have they been made visible/invisible or included/excluded by the judicial process? In the section ahead, I look at specific PILs on matters linked to the urban homeless and present the patterns in the rulings during the 1980s, 1990s and post-2000s. These patterns are markers and claims of exclusion in spaces created for the urban homeless to access justice and inclusion.

The Urban Homeless in the PIL, 1990-2020: An Assessment

In a high profile ruling of the petition against Salman Khan¹³⁹, leading to the death of seven pavement dwellers and injury of one, the HC acquitted the famous actor, for lack of proof over his drunkenness, claiming it to be an accident caused due to car failure. The 91-page ruling noted consistently that,

In Mumbai people do sleep on pavements. The accused was aware of that fact and admitted to the Court that the accident occurred due to mechanical failure and defect developed in his vehicle... The prosecution has failed to establish its case for all the charges pressed against the accused... Though the investigation might be impartial, it was conducted carelessly in a faulty manner with no regard to established procedures to establish evidence and the investigation was so conducted as to loosen the prosecution's case... The existence of any of the above hypotheses is highly deplorable but it is the duty of the Court to weigh evidences and determine offences against the accused...The petition does not survive and it is accordingly disposed of.

This judgement of 2015 takes us back to the 1980s when the Court expanded its horizon to "social and economic rights" keeping in context the "Right to Life, Article 21 of the Indian Constitution". Justice Khanna (2012, 163) argues that "this was triangulated with the right to equality and freedom¹⁴⁰ and began expanding the definition of Right to Life to fit the fundamental rights." Why then did the Court dispose a case that led to the death of seven pavement dwellers in 2015? What changed between 1985 and 2015? I will return and attempt to answer these questions at the end of this section. Before that, let me present the optimism around PILs and the judiciary's expansion of fundamentals rights as well as bringing in the "Directive Principles of state policy, which speaks about equality in health, education, income, etc." Baxi (1985) argues that in the first phase of PILs through the 1980s the

¹³⁹ CWP 572 of 2015 in the High Court of Bombay.

¹⁴⁰ "Article 14 and Article 19 of the Indian constitution" respectively.

Directive Principles were enforceable aspects of the fundamental rights and that this marked an era of 're-democratizing governance and politics' (Baxi 1985, 124-125). The Court became a space for the enforcement of rights and a successful undoing of the legacy of the Emergency.

The Supreme Court in 1985 issued a landmark ruling which continues to remain and hold precedence in cases related to the urban homeless, pavement dwellers, and their resettlement in cities. As already mentioned earlier in this chapter, *Olga Tellis*¹⁴¹ will be crucial to chart the narratives set by the Court and in assessing the politics of the PIL. In *Olga Tellis* the Supreme Court ruling stated that, "the right to livelihood is an important aspect of right to life. The eviction of pavement dwellers will deprive them of their livelihoods and as a result deprivation of life." It was in this ruling that the Court acknowledged the failure to implement Mumbai's master plan that led to a crisis in housing and the consequent problems.

The Court noted, "The density of population in the Bombay Metropolitan Region is not high according to Town Planning standards. Difficulties are caused by the fact that the population is not evenly distributed across the region in a planned manner. New constructions of commercial premises and entertainment houses in the heart of the city have been permitted by the Government of Maharashtra contrary to law... ..This coupled with the fact that the state government has not shifted its offices to the north of the city has led to high concentration of the population in the south due to job opportunities. Unless economic and leisure activities are decentralized, it would be impossible to find a solution to the problems arising out of growth of squatter colonies... ..The alternate places provided to pavement dwellers are not effective for their resettlement since they are very far away from their place of work and involves costs and time which are beyond their means, with no facilities like schools, hospitals and markets which drives them back to the city. The permission granted to the National Centre of Performing Art to construct an auditorium at Nariman Point, Backbay Reclamation, is a gross instance of short sighted, suicidal, and discriminatory policy of the Government of Maharashtra. It is as if the sea was reclaimed to construct business and entertainment houses in the city center, which creates jobs towards which the homeless flock. They work there and live on pavements."

The Court's response, while desiring to minimize harm and acknowledging the failure in urban planning, did not stop the eviction of these pavement dwellers. The Court instructed the government

¹⁴¹ AIR 180 of 1986.

“to house the homeless and hoped the government will continue to work towards the welfare of pavement dwellers and urban poor.”

To cite another case, in “K Chandru vs State of Tamil Nadu”¹⁴², the Court ordered the government to provide accommodation before evicting pavement dwellers. The Supreme Court in 1989¹⁴³ furthered this judicial sentiment that ‘housing is an indispensable need’ for guaranteeing the right to life with dignity. A similar judgement was passed in “Chameli Singh vs. State of Uttar Pradesh”¹⁴⁴ where the Court ruled that, “right to life guarantees food, water, education, health and shelter.” In 1997, another case¹⁴⁵, the Court referred to “the Universal Declaration of Human Rights and its clause that states that ‘everyone has the right to living conditions adequate for good health which included food, clothing, medical care and housing.’” The judiciaries’ emphasis on holding the government responsible for housing without withdrawing eviction and demolition drives is a dichotomy that continues across the country with the urban homeless caught in a cycle of being evicted, returning to the site of demolition, and being evicted again.

The 1980s saw a shift in the discourse on urban poor in PILs within the Courts and outside. In *MC Mehta vs Union of India*¹⁴⁶, the Supreme Court ordered polluting industries to relocate out of the city since people had the right to live and breathe pollution free. Nigam (2001) argues that for the Courts, “health was more important than livelihoods.” Widely published by the mainstream media, the case, Nigam says, was a synonymous drive against pollution and the poor, where the health of one section became more important than the livelihood of another (Nigam 2001, 45). In the context of the urban poor the judgements of the Courts led to increased evictions and homelessness and erosion of the idea of resettlement. In the judgement on *Almitra Patel vs Union of India*¹⁴⁷, the Court notes that, “slums are large areas of public land usurped for free private use and the encroachers needed to leave. Rewarding an encroacher of public land with an alternative place to live is like giving a reward to a pickpocket for stealing.”¹⁴⁸ In another petition filed by YUVA¹⁴⁹ against the demolition of 600 hutments in Mumbai, the Court refused to take responsibility or hold the government responsible for demolitions of urban settlements. The judgement noted that, ‘...the (Mumbai Municipal) corporation see that the growth of pavement dwellers is cancerous and a rot for the city and the growth must be

¹⁴² AIR 204 of 1986.

¹⁴³ AIR SC 630 of 1990.

¹⁴⁴ 2 SCC 549 of 1996.

¹⁴⁵ 11 SCC 123 of 1997.

¹⁴⁶ CWP 4677 of 1985.

¹⁴⁷ 2 SCC 679 of 2002

¹⁴⁸ Judgement of “Supreme Court bench of judges M. B. Shah, B. N. Kirpal and D. P. Mohapatro” on 15 February 2000.

¹⁴⁹ 60 AIR 1990.

removed not with a view to harass persons who have no place to live but to save the city from being ruined by the cancer. It will be possible to let the Corporation proceed with demolitions without giving a show cause notice... The Court would like to play safe and hence, the corporation is directed to issue notices to all the persons to show cause as to why their hutments should not be removed... it is made clear in our judgement that the ruling will not affect the powers vested in the local and state government authorities to remove unauthorized hutments.’

In the same judgement the judges acknowledged the failure of the state in adhering to Town Planning but did not associate it with the due delivery of a resettlement plan. It noted, “This is a public interest litigation and the interest of the entire city is at stake... therefore no civil or criminal Court in the city, except the High Court shall entertain any application for stay against the demolition of encroached sites by the authorities of the corporation.”

Post 2000, the Courts continued the trend of holding authorities responsible for failing in their duties in providing housing to the poor and clean the city. The question of citizenship of the urban poor came to be challenged. Distinguishing between the urban poor as ‘encroachers’ versus the ‘good citizens’ who have bought land or an apartment in the city, the Courts had taken a detour from 1985 when “right to life” was fundamental in its view to having no right to talk of fundamental right while being an illegal occupant: ‘there will be anarchy if encroachments are allowed on public lands and the government keeps gifting pieces of land to the encroachers’¹⁵⁰. In the following section I look at the case law to understand exclusion and the types of exclusion therein: How did a judicial innovation like PIL lead to exclusions - urban socio-spatial and economic - which was meant to protect the poor? How did the Courts define public interest to make these multiple forms of exclusion a possibility? Bhuwania (2016) has claimed that the transformation in the judicial discourse permitted courts to assume unaccountable power and intervene in matters of governance, in a legitimate way, by using notions of social justice, in public interest. With every passing decade since the 1970s until 2020, the definition and meaning of social justice has changed and so has the fascination with PILs. Documenting these shifts, Bhuwania argues that such a trajectory of priorities from poverty to environmentalism to governance has been possible due to the presence of ‘judges with problematic ideologies’, disregarding procedural safeguards and working through the ‘inherent instability of populism’ (Bhuwania 2016, 113-114).

The Urban Homeless as Crisis

¹⁵⁰ Order dated 10 July 1990.

Harvey (2009, 315), in theorizing “Right to the City” says, “the right to the city is a collective right, to access urban resources by exercising collective power to reshape the process of urbanisation. The freedom to make our city... is one of the most precious and yet neglected rights.” This statement needs to be understood in a transformative approach, a claim based on citizenship having consequences for the city and its residents and vice versa. The right to the city is a complex debate. It involves legal, social, economic, civil, political, and collective rights. For this thesis, the focus is on how this right has been used by the Courts (in *Ajay Maken vs. Union of India*) to conceive their judgements and define what it should mean for the urban residents. It enables the homeless on one hand to make claims to the spaces of inhabiting and at the same time be perceived as encroachers and a subject of crises for the government and planners. The Delhi High Court engaged with various concepts of Right to the City in *Ajay Maken vs. Union of India* in 2019¹⁵¹ and evicted more than 5000 pavement dwellers citing the ‘common good’ of the city. The judgement noted that “housing and shelter was important in the city and the contribution of slum and pavement dwellers to the city need to be recognized, as also their right to use the resources and opportunities in the city.”

In PIL cases decided between 1990 and 2020¹⁵², and which led to demolitions and evictions of the homeless and pavement dwellers, judgements have referred to the city as a site of crisis. I want to describe in this section how the judicial rulings reasoned this crisis in order to set a basis to legitimize certain spaces, people and problems and delegitimize others. In other words, to describe the city in a legal judgment as a city in crisis is a part of creating a narrative that the city needs to be saved from elements that are invisible and needs the Court’s intervention for it, and thus legitimizing the Court’s role in governing the city. Within the PILs related to the urban spaces, the Courts, through vivid descriptions, choice of words and metaphors in their judgements, construct a narrative of crisis, as a failure of urban planning and development, which is a question of public interest. How do we interpret this failure?

The ‘failure’ can be interpreted by looking at two things. One is what the Court frames as Encroachment/Encroachers and the other is the failure of what the Court terms Governance institutions – the elected representatives and public authorities responsible for the city. Encroachment – illegal use of land, and construction that violates land use – is, in the view of the Court, a failure of planning that needs to be fixed. Usha Ramanathan (2006) has argued that “this has violated the

¹⁵¹ CWP 11616 of 2015, judgement on 18 March 2019.

¹⁵² As cited throughout this chapter and in the next.

fundamental right to move around and settle anywhere in the country.” In addition, instead of integrating the poor into the city, the Court has highlighted the inefficiency of the governing agencies and shelved rights to housing and livelihood for the urban poor (Ramanathan 2006, 3197). The Court’s argument is that the failure to control encroachment turns the encroachment into an urban slum, a space that needs to be erased, one that is not planned and legitimate, “all for the benefit of the people, for public interest.” The encroachment, in the words of Bhan (2016, 108), “performs the work of city-making in the Court¹⁵³.”

In *Ekta Hawkers Union vs State of Maharashtra*¹⁵⁴ the “Bombay High Court” stated that the ‘problem of encroachment’ is one of the central points of arguing for the ‘state of crisis’ that the city is supposed to be in. The encroachment of land that belongs to the public and is meant for the planned development of Bombay, is “against the concept of planned development,” according to the Court. The focus on the city in ruling after ruling makes it seem like a site that is about to collapse because of the unwarranted encroachments. In *Pani Haqq Samiti vs BMC 2014*¹⁵⁵, the Court argues that the “city is growing at a pace where it has become impossible to contain the growth of illegal occupants, and in allocating resources to the citizens of the city the challenge needs to be faced.” The ruling goes on to distinguish the right to water as, “Right to get water is an integral part of the right to life... a person staying in an illegal structure cannot claim to get water supply on par with water supply made available to a law-abiding citizen living in a lawfully constructed premise. It is ultimately for the municipal authorities to decide in what manner the water can be supplied to the occupants...”

In talking about the encroacher or the illegal citizens, the Court’s anxiety is marked by land and uncontrolled migration. Land because the Court states, “...the rates at which houses are sold, a common man cannot acquire accommodation in the city... and have to live in illegal settlements in the city (Bhan 2016, 109).” This judicial concern with encroachment of public property is seemingly related to the value of the land and the costs to be borne as a result of the encroachment by city authorities. The judgement argues that ‘land is urgently needed for public utility’ and encroachment therefore becomes a challenge to regulate the increasing value of the real estate and land market. This reasoning reinforces spatial exclusion in the city.

¹⁵³ Bhan examines and describes the impact of planning on the urban poor and the impact that the Courts have had by stepping into urban governance and deciding what can and cannot be allowed.

¹⁵⁴ WP 652 of 2017.

¹⁵⁵ WP 10 of 2012.

The judicial concern with encroachment in the form of illegal settlements is tied with the idea of migration, as described in the previous chapter, as to how high in-migration to Mumbai has consistently increased causing a crisis in planning. In the *Suo Moto*¹⁵⁶ filed in 2020¹⁵⁷ to protect migrant workers from the problems and miseries of living in the city during a pandemic, the Supreme Court responded with empathy towards their cause. In *Ram Prasad Yadav vs Bombay Port Trust* 1989¹⁵⁸, however, the Court spoke differently: ‘...the Bombay Port trust is at the liberty to remove unauthorized hutments... although it is bound to cause untold hardship and misery to the occupants.’ The Court argues that ‘the flow of population to Mumbai is unable to be accommodated as people from across the country keep migrating to the city for jobs every year.’ The Delhi High Court in various cases¹⁵⁹ sees migration as a cause of ‘rampant illegal constructions,’ noting, ‘Delhi with its population can take no more¹⁶⁰. Mumbai is no different with respect to the fear of migration. It becomes necessary to understand the Court’s position on migration to examine how the crisis is rationalized by the government; why encroachment by a section of the public is a failure of governance and how it therefore criminalizes a huge section of the urban poor. I return to describe the criminalization in the next section.

Urban municipal officials, police authorities and public services often appear in the litigations as well as the judgements by the Courts, for their ignorance or incompetence to say the least. As already argued in the previous sections, the Courts have blamed the municipalities and the executives for the failure of delivering services like water, housing and implementation of policies leading to violation of rights and an increasing number of petitions. While some petitions representing the poor have accused the officials of being irresponsible and unresponsive or corrupt, there are other petitions which hold them responsible for failing to fulfil their duties like building houses for the poor. In “*Maharashtra Ekta Hawkers Union vs Municipal Corporation of Greater Mumbai*”¹⁶¹, the petitioners accused the officials of ‘harassing and constantly victimizing the vendors who are regularly targeted for extra income and treated with contempt.’ They further allege that, “The belongings of hawkers are destroyed regularly if the demands of the officials are not met. Perhaps these minions in the administration have not understood the meaning of the term dignity enshrined in the preamble of the Constitution.”

¹⁵⁶ *Suo Moto* is an action taken by the Court in its own accord without the involvement of any external requests.

¹⁵⁷ WP 6 of 2020.

¹⁵⁸ WP 716 of 1989.

¹⁵⁹ 114 DLT 2004; CWP 1397 of 2001; CWP 6150 of 2003.

¹⁶⁰ 108 DLT 2002.

¹⁶¹ Order dated, 9 September 2013.

The judges have ruled in favor of the petitioners by locating the failure of the government and its authorities by arguing that ‘it is because of the carelessness of the officials that encroachment is taking place’. In *Pani Haqq Samiti vs BMC*¹⁶², the Court argues that “it is the well settled principle that Municipal authorities are under obligation to prevent the construction of illegal structures and demolish the illegal structures¹⁶³.” The Court retells the administrators of the BMC summoned by the Court that it is their obligation/duty under the law to protect the lands from being encroached, and that it is the Acts like Mumbai Municipal Corporation Act 1888 that gives them the power to demolish and remove such structures. After making repeated references to the constituents of the Act, the Court questions, ‘how have the authorities allowed the unauthorized structures to come up?’

In marking the failure of the local and state/central government as the reason for the intensifying crisis in the city of Mumbai, the Courts found an emerging space for its role in governance. In *Maharashtra Ekta Hawkers Union vs BMC*¹⁶⁴ the judges of the Supreme Court argued, “the orders passed by this Court have not solved the problems of hawkers of Mumbai and Delhi and every year they seek intervention from this Court by filing interlocutory applications... This Court should direct the municipal authorities to stop their harassment, exploitation, and victimization by State agencies... However, till the needful is done, it will be apposite for the Court to step in and direct that the policy should be implemented¹⁶⁵.”

In *M C Mehta*¹⁶⁶, the Supreme Court asks, “what happens when protectors of law are violators? The task becomes difficult and requires the attention of the Court to preserve the law and the faith of the people.” The Judges argue that the Court “cannot be a mute spectator and need to step in to set things right despite the enormity of the problem.”

Through the argument of ‘poor/failed governance’ Courts have been able to legitimize their intervention in the city and resolve the problem of encroachment. This has allowed “the Court to position itself as a powerful urban actor”, and a necessary subject in an inefficient and unreliable governance system. In the 2000s and post 2010 rulings, one can observe a clear shift from the rulings in the 1980s and 1990s where the Court saw their role in the failure of government limited to diagnosing the failure as opposed to taking control and resolving the problem in the later years and directing the government to do their work as per Court orders. This emergence of the Court as a site

¹⁶² PIL No. 10 of 2012.

¹⁶³ Ruling dated 15 December 2014.

¹⁶⁴ Civil Appeal No. 4156 – 4157 of 2002.

¹⁶⁵ Order dated, 9 September 2013

¹⁶⁶ Final orders dated, 16 February 2006.

of intervention through the PILs specifically on matters related to the homeless made the Court a form of parallel administration. The Court is further given legitimacy in urban governance by its interventions because of the popular perception about the PIL that it gets things done, like better governance, accountability of government officials and so on, which makes people approach the Court to direct authorities to do their jobs (Rajamani 2007, 319-320).

This ability to hold the government accountable for urban crises paved the way for the Court to be an active entity in the process of governance. In this discourse the urban poor – the homeless including hawkers, pavement dwellers, evicted slums dwellers, among other groups have been understood as the crisis in the city. Mainly seen as encroachers and a result of failed planning, the judicial interventions have not necessarily given them the space in the city that they demanded through litigation. Instead, one observes a re-emphasis on the attempt of the judiciary to refer to the groups as a challenge of urban crisis, or as encroachers, or illegal occupants.

If the homeless are encroachers and a result of failed governance, how does the Court as a governing body make a different case for them? What is the basis for a tool like PIL which allows the poor to access the courts? The problem is the imagination of the city – as beautiful, planned and without encroachments, a utopia on paper that the courts also seek to achieve. In attempting to be balanced administrators of the city, the Court's construct of justice follows the same methods as the executive and bureaucracy. Does it then make the State and the Court allies in making criminals out of the homeless? This takes me to the next section, where I describe how the legal position, through laws like the BPBA 1959, creates a different life for those who participate actively in the creation of the city.

The Urban Homeless as Criminals

While planning a city gives governance a framework of what is legal and illegal, the legality itself is a base for urban planning. In India's cities, especially in a city like Mumbai where scarcity of space has always been a challenge for the government, illegality of using land in the city is a burden for its poor. The Court while seeking to regulate and set things right, often determines public interest as something that adheres to the concept of planned development.

The BPBA 1959, "defines a 'beggar' as 'one soliciting or receiving alms in public place whether or not under any pretence such as selling an article or performing, exhibiting injury of self or other,

having no visible subsistence and wandering¹⁶⁷.” Under this law, “a person could be detained for several years, simply for being a destitute. Such laws are used for the purpose of punishing vulnerable groups like the homeless, tribes, rural poor, Dalits (ex-untouchables in India) for their ostensible poverty. Begging for a living is charged with a maximum term of imprisonment for life under the Act¹⁶⁸.” “This law provides for the jailing up to three years in special “beggars’ Courts,” which can be extended to 10 years and also imprisonment for life in case of second and repeated “offences” respectively.” According to a representative of the “Department of Women and Child Development, Government of Maharashtra, laws related to begging are a state subject and not a Central one. Thus, there is no Central Act ‘regulating’ beggary¹⁶⁹.” The subject of beggary does not figure under any of the lists in the seventh schedule of the constitution of India¹⁷⁰. The beggary prevention Acts are implemented by State governments and Union Territories administration. Ramanathan argues, “there is ample evidence that people who beg risk violence and predation, not only from passers-by and the police, but from others who get their living on the street. Equally, the line between so-called ‘aggressive begging’ and robbery is dependent on subjective judgments regarding the degree of violence or the implicit nature of the threat which may accompany a demand for money.” Ramanathan (2008, 35) highlights the findings of the “committee appointed by the Bombay High Court to understand the implementation of the BPBA 1959 and the working of the ‘police squads’ on the streets.” The committee had concluded,

“(1) The arrest is made of the people who are found on the street in dirty clothes and wandering. They are not actually found begging.

...

(4) Large numbers of wrong arrests are made which is inhumane and unjust.

...

(7) There is no criterion to decide as to who is a beggar, who is sick, is physically handicapped or in need of economic help.”

¹⁶⁷ Law and Judiciary Department, Government of Maharashtra, *Bombay Prevention of Begging Act, 1959. Bombay Act No. X of 1960*. (Bombay: Director, Government Printing and Stationery, 1976)

¹⁶⁸ “Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Goa, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Uttar Pradesh, Uttarakhand, West Bengal, Pondicherry, Delhi, Daman, and Diu. Out of these states, Punjab has not implemented the act, in Rajasthan there are three institutions for detaining beggars, but no beggary prevention legislation.” Provisions for arrest are made through the state’s executive powers. Similar is the case with Pondicherry.

¹⁶⁹ Information based on interview with officers at the Department of Women and Child Development, Pune, Maharashtra, India dated, 17.10.2017.

¹⁷⁰ Seventh schedule (Article 246) of the constitution of India includes the union (central government), state, and concurrent lists of responsibilities.

Despite proof of misuse and the assumption that the allegedly impoverished are criminals, the beggary rules still exist in Indian law. Beggary laws have started to show how the law may be created, maintained, expanded, and applied when the constituency affected by the laws is powerless. This powerlessness is caused by the illegality that the law imposes upon them, the prejudice that poverty causes, the enormous gap between privilege and poverty, and the vanishing obligations of the state. Beggary laws in India present a number of challenging issues about socioeconomic strata and the state's ability to enforce rules. In States where anti-begging laws are rigorously enforced, violators of the Act are brought before specially appointed magistrates of beggars' Courts, who quickly determine whether individuals apprehended are beggars. A person should be assumed to be innocent until and until they are shown to be guilty, and it is the responsibility of the State to present such proof. Yet, in these specialised courts for persons accused of the "crime" of begging, typically little to no proof is presented or even sought, and a huge proportion of defendants are condemned by the Court based on factors like their glaringly impoverished appearance¹⁷¹.

The general infrastructure of the Court is substandard, with unpleasant smells and lanes of poorly lit corridors. In these session Courts¹⁷², the Magistrate is often presented with files of hundreds of people arrested under the Act and an official of the Beggars' Home¹⁷³ reads out the status of investigation, which determines the criminal status of the arrested. People are made to stand in line in front of the Magistrate and sent left or right, depending on the investigation report of the officer, left for release and right for detention in the Beggars' Home¹⁷⁴. The law's resemblance to centuries-old European vagrancy laws highlights the discrepancy between the official narrative, which believed that the homeless were indolent and deserving of punishment, and the drama that really permeates their miserable lives¹⁷⁵.

The beggary Act was first made applicable to Bombay City and a receiving centre and beggars' home for males and females were established for admitting beggars taken charge of under the Act. The Bombay Beggars Act 1945 was replaced with the BPBA 1959 with some new provisions like appointment of probation officers, delegation of powers to allow offenders to take leave of absence, release of beggars who were indefinitely detained, appointment of advisory committee, etc., which

¹⁷¹ Deka, Neelotpal. 2013. Begging: Poverty Vs Criminality. The Assam Tribune.

¹⁷² Also called Beggars' Court or Court number 46 in Kurla sessions Court, Mumbai.

¹⁷³ The Home is a detention centre intended for the rehabilitation of those criminalised-on charges of Beggary and follows the Prison Manual of other Central and State prisons in India for its functioning.

¹⁷⁴ Based on observations in Court taken during my work with Koshish – a field action project of TISS Mumbai between 2012 to 2014.

¹⁷⁵ Gopalakrishnan, Amulya. 2002. "Poverty as Crime." *Frontline*, November 9. Accessed July 26, 2020. <https://frontline.thehindu.com/other/article30246699.ece>

were felt necessary for the effective implementation of the Act. This Act was extended to the cities of Pune and Nagpur in subsequent years. The BPBA 1959 has been in operation for more than 60 years. There are 14 government run institutions in the state of Maharashtra, accommodating about 4000 people of different categories like able bodied, disabled, leprosy patients, etc¹⁷⁶.

The Act was enacted with the intention of reformation of persons in begging who are forced by difficult circumstances to be on the streets. The statement of the aims and purpose of the act is described as under in the law, “For the purpose of making uniform and better provisions for the prevention of begging in the State of Bombay; for the detention, training and employment of beggars and their dependents in certain institutions; for the custody, trial and punishment of beggar offenders and for these and other purposes it was proposed to enact a law... (BPBA 1959, Introduction).”

People were to be trained in suitable occupations to enable them earn their livelihood. However, with its unconstitutional framework, the Act has turned out to be one of the most obvious anti-poor documents. With the problematic approach in its implementation where hundreds of men, women and children are rounded up by the police every day, not for begging, but for appearing dirty and broke, there is little scope for escaping this false criminalization. The punishment of begging is contrary to the “fundamental right to life guaranteed under article 21 of the Indian constitution, which includes the ‘right to livelihood’.” In a review of the Act in 1990, the Bombay High Court recommended that it be abolished. It observed that, ‘the society which cannot provide for social security ensuring satisfaction of minimum needs has no moral authority to arrest persons for begging out of sheer helplessness’¹⁷⁷.

The law has made provisions for special jails, called Beggars’ Home for the urban poor convicted under this law and it extends to the cities of Nagpur and Pune, with a total of 14 special jails in Maharashtra accommodating more than 4000 people at any given point in time¹⁷⁸. While the act was enacted with the intent of ‘reforming’ people involved in begging, and train them in vocations that will enable a livelihood, the framework of the act has become one of the most anti-poor documents, which criminalizes people, not for a crime but for being poor. In fact, the difference between the two seems to have been discarded in the implementation of this law. Hundreds of men, women and children are rounded up by the police in Mumbai every day for appearing dirty and broke and there is little scope for escaping this process of criminalization.

¹⁷⁶ Davar, Bhargavi. ND. Vagrancy, Mental Illness, and the Beggary Prevention Act. *ActionAid Disability News*. 17-28.

¹⁷⁷ Gokhale, Sharatchandra Damodar. 1990. “Report of the Commission on Beggars Act.” Annexure No. 1.

¹⁷⁸ Based on continuous interviews with activists working in the institutions between August 2016 to December 2020.

The BPBA “does not draw any distinction between organized begging or people compelled to beg under circumstances of survival”. The approach therefore punishes homeless, destitute urban poor – mostly groups who resort to begging because of lack of employment, old age, disabilities, mental illnesses, or other problems. With a minimum remand period of 14 days in jail, the individuals working in the informal sector end up losing jobs, coupled the loss of belongings in the process of inhuman treatment. In such cases, people who were not involved in beggary before arrests must resort to begging to meet their needs. The consequences of enforcing a law like this with summary trials have led to children dropping out of schools and women quitting jobs after their husbands or fathers are convicted. In Maharashtra, if convicted the detainee is made to work as agricultural labour with a monthly wage of five rupees¹⁷⁹.

The law, designed for the cities in India, clearly equates poverty with crime. The clauses of the Act imply that it continues to exist across cities in the country only with the intention of exercising control over the urban poor, violating their rights as citizens. The Court and the authorities seemingly comply with the beggary laws’ assumption that poor people beg, are idle, and are potential criminals and a threat to the ‘honest citizens’ of the city. In the absence of legal aid, people arrested under this law can be sent to jail for no less than one year up to ten years on subsequent arrests¹⁸⁰.

The Delhi High Court noted that, “a committee appointed by it had found that in some homes, Beggars are administered beatings by the caretakers to break and subjugate their will. The committee also found that ferocious dogs which have been kept by the caretakers have bitten a number of inmates (Tarique and Raghavan 2011).” In violation of rights guaranteed by the constitution, the BPBA is one of a number of oppressive and anti-poor regulations that systematically breed urban marginality and exclusion. The anti-begging law in India does not distinguish between those who beg to support themselves and organised begging, which is when one or more people are forced to beg. Beggars are now treated in an institutionalised manner, which only serves to punish the poor. Many of those who are compelled or pushed to beg are unable to obtain job because to old age, physical handicap, mental illness, other poverty issues; they would still be just as susceptible as before.

The law expressly does not address the root causes of the beggarly problem, merely its manifestations. The government cannot close gaps in the policy measures necessary to safeguard the weak and

¹⁷⁹ See Tarique and Raghavan, Vijay. 2018.

¹⁸⁰ See BPBA Clause 6.3 Rules attached.

socially excluded groups by putting individuals into institutions with custodial responsibilities. They continue to lack other sources of support, which forces them into beggary. The problem is being approached incorrectly by the existing administrative strategy. Perhaps recognising and addressing structural inequities in society and increasing opportunities for employment are the best solutions. Nonetheless, it is essential to create a legal structure that does not bar the most vulnerable from participating in the growth process during this phase. Children have had to stop attending school, and women have been forced to resign from their jobs after their fathers and husbands were charged with "beggary" and found guilty as a result of the legislation's enforcement using hasty trials and improper investigations. While jailed under the BPBA in the state of Maharashtra, the detainee is required to perform agricultural labour on sizable plots of land connected to beggars' homes while being paid five rupees per day. Forcing labour at pay below those of a person is the price of being homeless and jobless in the city. Punishing the poor while teaching them to work hard is the strategy for dealing with poverty¹⁸¹.

In *Ram Lakhan vs. State*¹⁸² (Henceforth, *Ram Lakhan*), Justice B D Ahmed in his final verdict¹⁸³ takes a stand against the violation of rights of the petitioner. He states, "The matter does not end here. This case has another ugly twist. Although the Courts below had directed that the petitioner be detained in a certified institution, he was sent to Tihar jail which is entirely contrary to the provisions of the Act. This senseless and illegal Act heaped injury upon injury..... There was no occasion for sending the petitioner to Tihar Jail. Apparently, the petitioner has been in Tihar Jail from 07.11.2006 to 02.12.2006, whereas he should not have been in jail for even a single day!"¹⁸⁴

A specific legislation or existing laws like the Indian Criminal Code can accomplish what the Act seeks to do (I.P.C.). The Act's definition of "begging" is ambiguous, weak, and so broad that it may vary depending on the circumstances. There are a lot of people who lack any obvious means of subsistence in a nation where approximately 10% of people live below the poverty line and at least 12 million people are officially unemployed. Anti-begging laws violate Article 19 (1) (a)¹⁸⁵ of the Constitution of India which encompasses one of the six fundamental rights granted by the Constitution to its citizens. Ashish Goel (2010, 24) in his paper on the unconstitutionality of the Indian

¹⁸¹ Tarique, M and Raghavan, V., "India's war on its poor", open democracy, last modified October 20, 2019. "<http://www.opendemocracy.net/5050/mohammed-tarique-vijay-raghavan/indias-war-on-its-poor>"

¹⁸² DLT 173 of 2006.

¹⁸³ *Ram Lakhan* is an exception where the judiciary and the government together have recognised the violations caused to the rights of those booked under the laws.

¹⁸⁴ Ruling dated, 5 December 2006.

¹⁸⁵ Article 19 (1) (a) of the constitution of India, states that: "All citizens shall have the right to Freedom of Speech and Expression."

beggary laws highlights, “the failure of the Indian judiciary to differentiate between forceful and non-forceful forms of begging. The definitional problems of core terms such as ‘solicit’ and ‘public place’ make it even more difficult to interpret the purpose of the legislation and what it seeks to achieve.” The 1959 Act gives complete power to the police personnel to randomly arrest people and enforce ‘criminal statutes’ on them. Originally meant to check begging and rehabilitate persons in begging, the beggary laws have time and again led to more people being pushed into begging. The way begging has been described as an offence, makes many homeless people vulnerable and victims to the punitive law.

In response to the PIL filed by Manjula Sen¹⁸⁶ challenging the constitutionality of the law, the Court concluded that, “arrests are made of people in dirty clothes, wandering, but not actually begging; large numbers of wrong arrests are made, which is inhuman and unjust and that there are no criteria to distinguish a beggar from one who is sick, physically handicapped or in need of economic help.” A committee was formed to examine problems with developing legal doctrine and Act practise, and to provide recommendations for revisions or a manner of implementation that would assist the Act accomplish its goals. In an effort to make cities more attractive, greener, and cleaner, it has become popular to restrict access to public places. Parks are no longer places to sit down, footpaths have been constrained to make way for wider roadways, and flyovers have encroached into open areas. Apart from the region that supports people's livelihoods, informal housing is being removed, destroyed, or relocated.

In the words of Usha Ramanathan (2008), “This is a remarkable piece of legislation, difficult to explain in a constitutional setting. Arbitrary arrests of the apparently poor, subjected to a summary enquiry and summary trial, and sentence to long terms in custody, there are ‘raids’ and the ‘rounding up’ of beggars. There is nothing in the law prescribing ‘raids’ and rounding up; but there is nothing proscribing it either, and it is the routine that policemen and ‘social welfare’ officers adopt.” The notion that the majority of those who beg are associated with organised gangs and criminal networks forms the foundation of and justifies the punitive treatment of the poor. Activists and Organizations dealing with the target demographic have found, however, that very few accused beggar racketeers get arrested as a result of the BPBA. It is the underprivileged working class, those who are homeless or living in substandard housing, particularly the elderly, the abandoned, the crippled, the mentally ill, leprosy patients, drug addicts, transgender individuals, and eunuchs. The “de-notified and

¹⁸⁶ WP 1639 of 1990.

nomadic tribes”¹⁸⁷ are particularly vulnerable, because their occupations like “fortune telling, snake-charming and street performances, have been rendered criminal acts.”

The “international commission of jurists”¹⁸⁸ states that, “the rule of law should seek to create and maintain the conditions which will uphold the dignity of man as an individual ‘through the recognition of civil, political rights and social rights. For this to be achieved, the laws imposed in a society must possess certain characteristics. The law must be capable of being known, that is, it must have clarity and specificity. If this is not the case, citizens will not be able to exercise that autonomy which the rule of law is supposed to ensure. Blanket prohibitions against begging, such as those that exist in India, may be criticized for lacking this clarity and specificity. Another requirement for the rule of law is generality, that is, law should have equal operation with respect to all citizens. However, the issue of mental illness remains extremely sensitive and a serious concern in the context of the custodial population. It is a challenge to develop a rehabilitation plan for a person labelled mentally ill.”

This is an even bigger challenge since mental illness is perceived with a lot of stigma and attitudes of people at large are yet to be changed. Moreover, it may be claimed that laws prohibiting begging do not have this feature. Homelessness laws are only sometimes applied in an effort to remove homeless persons from the streets or persuade them to leave the city. Anti-begging laws effectively punish poverty. Criminalizing folks who have not done anybody wrong is arbitrary, and as a result, it's unlawful. A check on unfair substantive criminal legislation like these is provided by the right not to be criminalised, which goes beyond simple procedural protection. The homeless represent and symbolize legitimate diversity in the city. Refusing to recognize their presence and aspirations by rejecting their spaces, is delegitimizing their politics.

Arrests of the homeless are not new for Mumbai. Yet the Koshish case that this chapter began with brings to light the series of arrests that have scarred the homeless through orders - not by the municipality, State or Centre - but by verdicts of the Chief Magistrate in the lower Courts. While the Bombay High Court in 2018 released the detained people, this is not the first time that the higher Court has ruled for the unconstitutionality of the Act. The petitions by Manjula Sen and the Ram Lakhan case were both testimony to the higher Court's intention to make justice accessible for the poor by speaking of the unconstitutional nature of this law. Despite the rulings of the High Courts of

¹⁸⁷ Communities formerly criminalised by the British.

¹⁸⁸ “The International Commission of Jurists (ICJ), The Rule of Law in a Free Society, Declaration of New Delhi. Passed on January 10, 1959, by International Congress of Jurists in New Delhi, India.”

Bombay and Delhi, the BPBA 1959 continues to be invoked to arrest and detain the homeless daily. The verdicts of the petitions stand true only for the specific cases and make no difference to the processes leading to other detentions. What then makes the PIL that intends to democratize legal space a tool for long term inclusive justice?

City and the Politics of Exclusion

The PIL among other petitions allows the Court to position itself as the decision maker in governance and is explicitly leading to a system resulting in urban spatial transformation. In the Court, petitions become an example of spatial, social, and political urban matters that need to be resolved. For instance, the implementation of a city's master plan becoming a matter of public interest makes visible the dual character of the processes of multiple forms of exclusion – which include as well as exclude the homeless.

In the first chapter, I showed how the rich and the poor alike came to settle across Mumbai over the decades; how planning and legality entered the city much after the settlements came into existence and in the process made illegal citizens. In the second chapter I have presented precisely the gaps and processes through which the Courts emerged, or were invited by the groups demanding “right to the city, in the planning and governance of the urban spaces” and the trends in the Court's ruling since the 1980s until the last decade. The discourse on judicial governance in India – in the mainstream media as well as in academics – has revolved around the boundaries of the judiciary in the role of governing the city and its comparison to the roles of the executive. I propose an inquiry, using the analytics of exclusion, to understand the rationale set by the judiciary, by these PIL rulings, in sanctioning multiple forms of exclusion that are democratically legitimized. In the final section, I bring together the autonomous yet connected frameworks I suggested in the beginning – (a) The implications of the judiciary being a part of the larger dominant sections and its consequent rationalities that are a part of the present-day urban governance; (b) the democratization of exclusion especially in the context of the reconfiguration of the Indian economy in 1991 in the post-liberalization era; (c) as well as the need for a globalised governance model. I explore what the legal position on urban homeless in these rulings suggests about these transformations in the urban and shapes the politics of the urban.

In understanding urban politics, the urban poor in general or the homeless are elements that tend to break the imagined urban cohesion. They do not fit into the personality of the urban space as imagined

by the decision-makers of the city, of those who are deemed rightful citizens according to law. They therefore remain excluded from deliberations that affect them directly or indirectly, thereby losing legitimacy. This exclusion for example is visible in the legal position on litigations that on one hand acknowledge the need for a shared consensus of constitutional rights for all, while in the same breath deem the public interest of one section more reasonable than the other. Could this be the end-product of the judiciary being represented by the former section, where there is familiarity and a sense of understanding with one another? The urban poor therefore, actively demanding citizenship rights, become a threat for the community as a whole.

The Court's framing of public interest based on paradigms of urban development makes the courts sites of exclusion in a manner that creates new platforms for the non-poor to acquire legitimacy in ownership of urban spaces. I suggest in this chapter that the expansion of judicial activism and assertiveness of the courts does not necessarily reflect an inclusive nature of the system; rather it projects the selective activism as a result of the judges possibly being aligned to regimes of power and a subset of the ruling elites. Robert Moog's scholarship on the Courts in India in analyzing the judiciary's role in urban governance (1998) and its political context in explaining the absence of an independent judiciary (2002), is telling of the void in creating an inclusive urban space. This brings me to the point of urban spatial exclusion that makes the urban space appear 'homogenous' (Lefebvre 1991, 200, 282), depriving it of any history or personality other than those noted in the Master Plans. The judiciary's invocation of urban development in litigations, strategically shifting our political imagination and representation of the city, makes the urban space a central element for capital accumulation, and anything that breaks this imagination falls in the bracket of a crisis. The rise of this political imagination of transforming Mumbai, among other cities, into Smart Cities, the new catch phrase for urban development, is to enable and legitimize multiple forms of exclusion. In fact, to quote Amartya Sen, this may be termed as 'unfavorable inclusion', with the terms of being part of urban life being highly unequal (Sen 2000, 28) and leading to consequent deprivation and increased vulnerabilities of those living in poverty.

The insights into exclusion derived from the rulings of the courts demonstrate the impact that ruling dominant sections of Indian society can have in determining and defining public interest. For the homeless this pre-condition is clearly debilitating resulting in evictions, displacement and often punitive measures leading to criminalization. In a way the judiciary and the State, including the national and local governments, become complicit in the exclusion of the homeless from public spaces. In attempting to interrogate urban politics from the lens of the judiciary, I have tried to

understand this terrain of formal exclusion (as well as the narrative of inclusion) that democratic politics in Urban India constitutes today. In doing so, I have observed the convergence of the government and the judiciary and the roots of their discourse; a collaboration that builds a rhetoric of inclusion and social justice, but is obviously indifferent to the competing demands for rights and space by the urban poor.

Chapter Three

Citizens of the City:

Unpacking Urban Citizenship

In the north-western end of Mumbai, which is also one of its geographical origins, is a creek. The creek separates greater Mumbai or the old city and the planned city by those who live in what is known as Navi Mumbai/ New Bombay. Greater Mumbai houses more than a million people in a highly dense space which has a historical urban form of the British era as well as structures of modern planning. From Backbay's *Machimar* colony to Dharavi to Cheetah Camp, the locales have been classified as wards and a lot of these mainly comprise slums or zones needing development or protected heritage sites.

In 1991¹⁸⁹ a redevelopment project was announced for some parts of Greater Mumbai, followed by the Slum Rehabilitation Scheme in 1995¹⁹⁰. Both these schemes never saw daylight since housing was never given to the slum dwellers in Mumbai. According to P K Das (2003, 211), it remained the greatest bluff till date perpetrated on slum dwellers in Mumbai. In 2009, Rajiv Awas Yojana was launched by the then President of India with the aim of providing slum dwellers the 'same infrastructure as other citizens and include them in the urban fabric'; and like its predecessors this scheme also did not create any visible difference to the city's slum. It is also interesting to note that all the urban schemes were focused specifically on slum dwellers with no mention of the homeless or other groups of poor until then. In 2006 however, the Mahatma Gandhi Path Kranti Yojana, a scheme specifically targeting pavement dwellers was announced with the main aim of making Bombay 'free from encroachments'¹⁹¹. While the government did not reveal any figures of those who were granted housing and those who remained uncompensated, this inevitably led to settlements in other parts of the city. The development plan for 2014-2034¹⁹² aims to 'tackle issues of space' and

¹⁸⁹ Slum Redevelopment Scheme 1991 was introduced by the Congress Party due to the rampant privatization at that time and land being sold to builders in order to increase profits. The scheme came to be replaced soon due to the unavailability of alternate housing.

¹⁹⁰ The Shiv Sena and BJP coalition government established this scheme for slum dwellers to provide them a 21 square meter house through private contractors who would build the houses for them.

¹⁹¹ The scheme was applicable for pavement dwellers who could prove they have been residing in the pavement before 2000. Everyone else was to be displaced with no resettlement or compensation.

¹⁹² See chapter 1 for a discussion on the plan. Accessed on 25 March 2020. "https://s3.ap-south-1.amazonaws.com/wp-gmr-assets/Mumbai_Development_Plan_DP_2034_Draft_in_English.pdf"

desires an ‘inclusive city and inclusive streets’ for the urban poor¹⁹³. This legitimacy is planned to provide formal, legal spaces to hawkers, for example to trade and sell goods. The plan does not speak of the homeless/pavement dwellers in the document.

Amidst the town planning announcement of 1985 redevelopment project for Greater Mumbai was a neighborhood named Azad Nagar. According to the project, the inhabitants of Azad Nagar who opted to surrender their houses and land would be resettled in permanent housing near their current location in the next three years. They were given temporary accommodation in Malwani, on the Western Suburbs of Bombay¹⁹⁴. Amidst the demolition of over 600 hutments across the area in order to raise skyscrapers, over 50 hutment dwellers were provided this temporary accommodation. The permanent housing did not materialize even thirty years later. Tracing the community with the NGO Youth for Unity and Voluntary Action¹⁹⁵, Mumbai (YUVA), I noted that those of who moved to Malwani were given an eviction notice in 2016 to be shifted to another temporary settlement before they can be moved to their permanent housing. In 1986, YUVA had organized the hutment dwellers and approached the Bombay High Court filing a PIL¹⁹⁶, arguing that their life and work was around Azad Nagar and they did not want to move. They were displaced nevertheless. In 2016, they were offered alternate housing by the municipal corporation in Azad Nagar, their original place of stay. Three generations had come to live in Malwani and the State wanted to send them back to the same place they never wanted to leave.

¹⁹³ While fully understanding the heterogeneity of the category of ‘urban poor’, and in the Indian context, the economic, social, political identities of the people present different struggles, I’d like to refer to Gooptu’s (2001) methodological attempt to argue for the category as a useful reference to highlight the vulnerabilities associated within the populations. While the multiple vulnerabilities of urban poor in a city like Mumbai stem from various economic and non-economic aspects of their identity, the legal identity, proof of being eligible as citizens, are also a major category for understanding their vulnerability in contemporary times. The most vulnerable groups in the city, including the homeless and destitute, are also physically and mentally challenged, often belonging to lower caste groups. See Routray 2014, Harriss 2005 and Gooptu 2001 for a discussion on urban poor.

¹⁹⁴ Interview dated 16 February 2018.

¹⁹⁵ Based on field work done between 2012-2014, 2016-2017, 2018.

¹⁹⁶ Youth for Unity and Voluntary Action vs. State of Maharashtra and others, final ruling dated 10 July 1990.

In 1990, the Court had ordered the demolition of hutments, and in 2016 the hutment dwellers, instead of taking the State to Court, chose to protest¹⁹⁷ and organize with other vulnerable communities demanding a space in the city. Under the umbrella of the Nivara Haq Samiti¹⁹⁸ and Ghar Banao Ghar Bachao Andolan¹⁹⁹, the community argued that they were ignored because they were members of scheduled caste communities. They accused the BMC of being ‘insensitive to the needs of the scheduled caste families’²⁰⁰. They demanded the welfare state to rightfully protect the people from the lower end of the society instead of crushing their rights and denying them the right to live in decent and healthy environments. These points raised by the community in Azad Nagar are common in Indian politics where poverty and exclusion are defined by lower economic status as well as social humiliation (through caste) forming the basis to claim rights from the State. Yet the municipality refused to halt the demolition. The Court order also refused to stop the eviction stating that the community was in transit accommodation and had to vacate. Thirty years on, with the community in a perpetually transitional accommodation, the resettlement that was promised never came.

The community did not file a PIL in 2016 because of the ‘absence of faith in the judiciary’, in the words of those I interviewed as many other settlements had filed petitions in the Court with no substantive help²⁰¹. The Municipal Commissioner along with a Court appointed officer visited the protest site²⁰² and argued with the leaders of the community that the options of housing offered to them are apt for them, implying their low social status. The community claimed that the State and the Court are discriminating against them based on their caste status.

¹⁹⁷ Based on field work done between 2016-2017, 2018.

¹⁹⁸ Nivara Hakka Samiti was founded in 1982 in Mumbai by activist and film maker Anand Patwardhan to fight for the right to housing for the urban poor.

¹⁹⁹ Ghar Banao Ghar Bachao Andolan is a people’s movement initiated in 2005 under the leadership of Medha Patkar to fight for the right to housing for the urban poor.

²⁰⁰ Interview with Latabai Pawar, member of the settlement and an organiser of the protest, dated 18.9.2016.

²⁰¹ See a detailed list of evictions in Mumbai and Navi Mumbai among other cities in 2016/2017: “https://www.hlrn.org.in/documents/Forced_Evictions_2017.pdf”

²⁰² Recordings from protest dated 15 February 2018.

Demolitions and evictions are not a new phenomenon in Mumbai or in any India city. Yet the highlighted evictions of communities are different from previous evictions in the sense that they were not done by the municipality or the ruling governments alone but in collaboration with the higher Courts of the country, paradoxically through a scheme introduced to allow access to justice for the marginalized groups. The PIL, as I have discussed in the previous chapter, given the procedural rules, has been used by the different classes for their respective interests and this, when the players are middle class people or the State, results in the PIL leading to anti-poor decisions by the Court to justify development and erase the homeless from the public spaces and reframing the idea of crisis and illegality by terming people as ‘encroachers.’ The exclusion of the homeless was now framed and legitimized as crisis management or clearing of encroachers spaces for public interest. In this chapter, I will look at the PILs with a different set of questions – asking what these demolitions tell us about the urban poor’s political identity for one; as also about the politics of citizenship.

Sen (2000) has argued that, ‘exclusion reinforces the understanding of poverty as capability deprivation, and can be used as a tool for analyzing deprivation of basic capabilities and addressing challenges of policy following the diagnoses (Sen 2000, 46)’. Upendra Baxi (1988, 231) has argued that, ‘words like poverty and poor diminish the processes of production and reproduction of poverty and argues for a perspective located around impoverishment’. Gautam Bhan (2014) argues, ‘that the process of impoverishment is critical for designing effective resistance and policy making, both within and outside the Court’. Bhan argues for, “the necessity to take impoverishment seriously, by countering the ways in which the experience of poverty has been written out of the social, political, and structural imagination of city life and urban space (Bhan 2014, 558).” Litigations like the Azad Nagar case are among other cases across the country through which we can understand the processes of exclusion and impoverishment in Indian cities. Here, I analyze litigations around urban poor to present how they create these processes of exclusion – a) tension between social identity and political identity; b) erasing the vulnerability of homeless through the legal discourse; c) the conception of

homeless as encroachers/criminals, and consequently improper citizens which forms the basis of denial of rights to specific spaces in the city, leading to spatial illegality and exclusion. It is this discourse that enables exclusion and allows its reproduction over the years. I argue that it is these processes that lead to the exclusion of the poor and legitimizes the imagination of poverty itself in the city – in what Bhan (2014) calls the ‘impoverishment of poverty.’

In order to explore these questions, I refer to litigations, mainly 20 PILs from the archives that have impacted the urban homeless or pavement dwellers in Mumbai between 1985 to 2020 in either the “Supreme Court of India or the Bombay High Court”. I attempt to understand, through the rulings as well as the original petitions that led to the PIL in the first place, contours in the verdicts in how the judges decide what can be deemed as public interest. I not only look at the rulings, but also at the wording of the first petition that resulted in the PIL affidavits. Court appointed committee reports, as also community appeals to the Court who are directly affected by the Court orders.

The interactions between social identity (caste) and political identity (citizens) form an important aspect of the discourse on exclusion in India and specifically in understanding urban politics. The chapter is presented in three parts. First, it traces the broader theoretical debates on concepts of citizenship within the city, thereby locating the analysis of the chapter. Second, it highlights the proceedings related to the homeless in Mumbai since 1985 to outline the processes and forms of exclusion and impoverishment outlined in the previous paragraphs. The third section co-locates the judicial positions with the broader political, social, and economic evolution of the city presenting the processes of exclusion and impoverishment that begin not just in the Courts but are also due to various factors that extend beyond them.

Social and Political Identity – Setting the Context

The continuous interaction of caste with class, gender, religion, and migration also shapes life-worlds and opportunities in the city. While moving to the city includes expectations of liberations from the

oppressive village structures, caste stratification and stigma do not vanish but reproduce and reformulate as caste groups start forming in the urban context²⁰³. In their study of urban segregations by caste, Singh, Vithayathil and Pradhan (2019) quote narratives²⁰⁴ of groups who struggle to find housing in the city unless their caste identity is a secret which opens up another vulnerability of being exposed and threatened if the identity is revealed. In addition to economic status, caste remains the main aspect of urban residential segregation (Vithayathil and Singh 2012; Singh, Vithayathil and Pradhan 2019). The process of urbanisation and migration from villages in this sense has only transferred the spaces of inequality and not the structures in present day India with new and modern forms of discrimination. The consequences of spatial mobility open up occupational diversity but often fail to translate into a social mobility for the lower castes. On the contrary, for upper castes, the absence of an economic support does not take away the social position and respect conferred in the caste hierarchy. India has for long grappled with questions of caste discrimination and continues to grapple with its new forms in an age of social distancing²⁰⁵.

The social negotiation of space within the country is largely done through caste-based atrocities, violence, communal riots, discrimination. The ideas of urban and rural put to test in a globalized society help us articulate the contestations over space (in the city). In a political unit like India, it also helps define the meaning of space and re-production of inequality in modern forms. The perception and representation of space depends on the subjects 'within it' (Grosz 1995), i.e., the spatial context determined by the subjects and vice versa. Guha (2013) critiques the absence of spatial aspects in studying social segregation especially in relation to caste hierarchy and dominance. Dirks (2001, 26) states, '...spatial organization of a group is related to the nature and extent of dominance of and by the group'.

²⁰³ See Guru, 2012 for a discussion around modern forms of untouchability and how caste continues to reproduce itself within different contexts.

²⁰⁴ The authors Singh, Vithayathil and Pradhan (2019) cite Limbale, 'The city is made of herds of castes. Even localities are identified by caste names.'

²⁰⁵ See, <https://thewire.in/caste/social-distancing-dangers-india> for a discussion on Caste and its history of social distancing.

Despite the constitutional²⁰⁶ provision to eradicate caste as a social system, caste continues to matter. While the urban and rural may seem like categories that are exclusive to each other, these are spaces that are governmental categories (Roy 2015, 811) on one hand but also spaces created by those on the upper end of the hierarchy to proliferate their politics and status quo albeit in different forms. Therefore, the spatial nature of caste and inequalities emerging out of the system needs to be looked at in the ways it evolves and reproduces itself in different scales and the construction of these scales to determine how spatial exclusions flourish. The radical changes in Indian society in the last century in terms of her social and economic transformations have been significant. Despite the advent of democracy, neo-liberal economic models and an open market, India's social structure remains rigid and caste remains a crucial constant in production and reproduction of inequalities - social, cultural, political, and economic.

The process of urbanisation and migration from villages in this sense has only transferred the spaces of inequality and not the structures in present day India with new and modern forms of discrimination. These structures help the upper castes work through the secular democratic institutions and enable domination across local, regional, and national governance, education, health, economy, etc., furthering exclusion of lower caste groups. The inheritance of identities leads to the reproduction of exclusion aided by social biases and the available mechanisms. How do these norms re-construct a way of thinking about the city and its rightful citizens and in determining whose interest constitutes public interest?

The point of bringing the debate around caste and space was to precisely present the dynamics and tension between the social identity (caste) and political identity (citizen) and how it manifests in the contradictions of urban citizenship.

²⁰⁶ "Article 15 and Article 17 of the Indian constitution abolish untouchability and its practice in any form and differentiation on the basis of caste."

The JNNURM the first urban mission launched in 2005 was the only policy post-independence to focus on urban development until then, now followed by AMRUT; the National Report on Urbanisation was published for the first time in 1988; the “Ministry of Urban Development” came to be formed in 1994. In the last five-year plan (2012-2017), expenditures on rural development are higher than that for urban development²⁰⁷. Despite not having an urban employment scheme, or a social safety net in cities, the migration to cities has been increasing every year. India does live for a large part in its villages even in 2020 with around 40% of the country classified as urban. What does this pull towards the city as a site of politics mean for urban citizenship and specifically citizenship for the urban homeless? And how does the “city as a site for urban politics” build on the national and judicial narratives of transformation? I will attempt to answer these questions ahead.

The Contemporary City and Citizenship

Since 1991, Mumbai among other metropolitan cities in India became a site for connecting the local/national economy to the global economy. This concept of becoming a ‘global city’ was developed by the imagery of modernity and urban development. The Master Plan 2014-2034 describes Mumbai as a “global city that balances Economy with Environment and Equity for all’ (DP 2014, 95).” This concept of modernity and its linkage to being full members of society have been argued since the 18th century (Holston and Appadurai 1996, 187). According to Holston and Appadurai (1996, 188), “citizenship, and not kinship or cult ship, defined prerogatives of that membership.” While the nation state has been the site of performing citizenship, Chatterjee (2004, 30) argues that “modern citizenships are expected to be realized in the nation.” Within this nation state, holding the identity of a citizen takes over any other identity. It is this identity that leads to the possibility for a politics of equality and rights. In the words of Nivedita Menon (1998), citizenship,

²⁰⁷ With the dissolution of the planning committee, India no longer has five-year plans post 2017. For details of the last plans urban rural fund allocations for development, check page 4, see: “https://web.archive.org/web/20120130061303/http://planningcommission.nic.in/plans/planrel/12appdrft/approach_12plan.pdf.”

rights and justice are intertwined in a democracy and a citizen bereft of any other identity holds the potential of winning, accessing justice and rights (Menon 1998, 3-4).

In his classic essay on citizenship in Britain, Thomas Marshall argued that civil, political, and social rights constitute three aspects of citizenship. He argued that democratization had led to expansion of liberal citizenship (Marshall 1977, 101). Holston (2008) argued against this, stating that democracy and citizenship and the growth of rights need not necessarily be connected and they evolve in ‘complex ways’ (Holston 2008, 317). For India, the trajectory of citizenship is rooted in its interaction with the colonial powers. The politics of creating a national identity, Chatterjee (1997) argues, “was the ‘development ideology’ based on the State’s claim to grow economically and framing this ‘development’ as the goal of the nation. This post-colonial discourse on democracy and development set the context for determining citizenship in India (Chatterjee 1997, 277).” In this context of development is set Chatterjee’s famous “distinction between ‘civil society and political society.’” He argues that, “most Indian ‘citizens’ are populations who are to be ‘governed,’ objects of the Welfare State, not citizens as described in the Constitution. They form the ‘political society,’ who ‘do not bear any intrinsic moral claims or rights to the state’ unlike the citizens that form the ‘civil society’ (Chatterjee 2004, 74, 136).” Chatterjee is referring to the urban poor here, who, without any claims to the city, are forced to operate in the domain of illegality, beyond the codes of law, unlike the middle classes and elites who exploit the laws of the land from a highly advantaged position as citizens and who engage with the authorities as important stakeholders seemingly contributing to the development of the city/country (Raman 2013; Weinstein 2014; Ranganathan 2014). One of the questions that Chatterjee raises is particularly important for this dissertation – what is the relationship between the evolution of the development discourse and its impact on the status of citizenship in the country? And what form do these relationships take in the urban spaces in the context of the politics of the urban poor and their claims to rights to the city?

Feminist critiques of the ‘citizen’ in the Indian context as bourgeois, heterosexual, male and upper caste have been well established²⁰⁸. These critiques have provoked a discussion about citizenship and its overlapping with various identities like caste, gender and religion. I would point out Menon’s argument that exclusions from being a citizen are based on the same logic of exclusion that paved the way for the making of a nation. She argues that citizenship in India is based on and stems from the violence that has produced the nation and at the same time created marginalization and oppression based on which the nationalist discourse was built. In thinking of citizenship in India, one cannot be unreflexive about the repressive structure around which the nationalist discourse was established (Menon 1998, 8).

Substantiating it with what Holston (2008) argues, citizenship is a ‘means to organize society and can be both inclusionary and exclusive, can be a project of equity and also of sustaining inequality’ (Holston 2008, 21). A few questions relevant to this chapter emerge here: What does this mean for the multiple forms of exclusion produced and reproduced as a result of citizenship and its various aspects? How are different groups, imagined constitutionally as equal, denied rights to citizenship? What are the impacts it can have for urban politics in a democracy?

Present day scholarship on citizenship has explained the concept in multiple ways, expanded it beyond the narrowly legal ideas, and presented it as a site for national/urban politics. I am taking from Holston²⁰⁹ and Appadurai an understanding of citizenship as ‘a dimension of belonging in society’ as well as a lobby for the city as a ‘site for novel debates on citizenship’ (Holston and Appadurai: 1999, 4-6).

Urban Citizenship and the Homeless

²⁰⁸ See Young 1990, Kabeer 2002, Menon 2004, Das 2011 among others.

²⁰⁹ Also see Holston (2008) - in his study of Sao Paulo and its fringes (Holston 2008, 23).

The nation state, as described in the previous section has been and continues to be contested as the scale for citizenship. Across social sciences, there are critics who argue that in order to understand the nation we need to develop new methodologies in a global time and age and break away from the methodological nationalism in understanding citizenship in the context of urban politics²¹⁰. Citing growth of trans-national and non-governmental politics as important sites of claiming rights²¹¹ and engaging with cities across the world in order to compare and gauge the ‘political society’ across borders is crucial to study citizenship²¹². For this thesis it is interesting to note this shift of scale from nation to city with respect to citizenship. Holston (1999), for instance, has argued that ‘cities and not nation states are sites for understanding the renegotiations of citizenship (Holston 1999, 168-169).

Saskia Sassen (2002) on the other hand presents cities as ‘the new geography formed due to the cracked container of the nation for social processes, to articulate political and economic systems.’ She questions “the new forms of politics in the city through claims like right to the city and theorizes the city as a ‘crucial site for political work’ (Sassen 2002, 18).” For Lefebvre the city is a fundamental scale of spatiality in a capitalistic structure. He argues that the social, political, and economic dynamics of a city depends on its connection to various sub-urban geographies. The approach provides a useful methodological insight for understanding the scalar aspect of the urban question in contemporary times. Lefebvre’s (1991) argument for the city as a primary scale has been significant in the emerging discourse around right to the city, both theoretically and in social movements across the world. At the core of the urbanisation theory, Lefebvre’s theory was a trigger to “claiming right to the city, to understand the city as a space of social and economic participation and production of new forms of politics.” David Harvey (2008) raised important questions around citizenship in the city and the need to understand it as a process of “democratizing right to the city as a political ideal”.

²¹⁰ See Ong 2006 and Roy, 2011.

²¹¹ See Appadurai 2002.

²¹² See Holston 2008, Sassen 2002.

In contemporary times, it is in the expanding urbanisation in India and the urbanism in its existing cities that the claims of right to the city are being realized. Appadurai, in talking about the urban poor in Mumbai and urban social movements, has presented these movements as ‘deeply democratic,’ as new forms of urban politics that represents a ‘reconstitution of citizenship in urban spaces from below (Appadurai 2002, 24-25). Appadurai’s analysis is telling of the nature of citizenship in simultaneously creating exclusion and creating claims for equality, access, and rights to the city. It is from Appadurai that I take another question interrogated in this chapter: What can we learn about urban citizenship and what it means for the urban poor from an examination of court judgements on the urban poor?

Holston sees the city and urban citizenship claims through the “lens of a counter politics that destabilizes the dominant notions of Nation-based claims of citizenship, reduces its impact and coherence with which it is designed and presented (Holston 2009, 253).” Holston defines urban citizenship as, “... a place where urban residence is the bases for mobilization, claiming of rights, addressing the urban experience, the city is the primary reference for these developments and the residents of the city legitimize this agenda of rights and participation on the basis of their contributions to the city itself (Holston 2008, 23).”

It is also important to note that Holston’s does not claim this definition of urban citizenship to be an egalitarian one. He simultaneously presents the idea that citizenship is also a means for generation of inequalities and exclusions, as much as it is necessary in claims for equality and justice in democracies²¹³. What can we learn about the characteristics of urban citizenship in an Indian metropolis from an investigation of the criminalization of the homeless?

Seeking to be a world class city like Shanghai and Dubai, Mumbai’s modern skyline and integration into the global economy has visibly excluded the poor. In evicting and resettling the poor from one part of the city to the other, the governments and Courts have strategically created a mega city without

²¹³ His study is based on understanding the peripheries of Sao Paolo.

support for communities in these peripheries. The challenge for a city like Bombay, where the local and State governments are focused on making it poor-free and create a spectacle of a world city and the non-governmental organizations aspiring to create inclusive spaces in the city for the homeless and protection of their right, is that a resolution is still not found. With judicial intervention as discussed in the previous chapter, since *Olga Tellis*, a new form of urban politics has emerged, for the state, the alliances, the NGOs, as the homeless themselves.

In the language of rights, Menon (2004) argues that, “appeals made to a court of law are made on the assumption that rights are present and evident in themselves, and universally applicable. It is this dichotomy that perhaps creates a language of rights available in unproblematic ways to democratic and emancipatory politics (Menon 2004, 2).” In this part of the chapter, I discuss the emergence of this rights discourse as they are presented in the litigations related to the urban homeless through two main aspects of claiming of rights which are notable in the judicial rulings: 1. The use of the word ‘citizen’ by the courts and the petitioners alike to identify and describe themselves, and, 2. The shifting claims of citizenship in respect to the city instead of the nation.

City and Citizenship

Many of the petitions filed in the context of the urban poor, including the homeless, hawkers, pavement or slums dwellers, informal workers, etc., are by residents as also by trade associations and businesses who describe themselves as citizens or residents in the petitions. The idea of this citizenship is defined by an identity centered around the city, as a local, as citizens of Bombay or Mumbai, focusing on their place of residence. The Court also describes them as citizens and position themselves against categories of urban poor. For instance, “in Maharashtra Ekta Hawkers Union vs. Greater Mumbai Municipal Corporation”²¹⁴, the Court says, “it is expected that the citizens shall participate in keeping non-hawking areas free from hawkers”; or in *Shri Vile Parle Kevlani Mandal*

²¹⁴ Final ruling dated 9 September 2013.

and Ors vs. GMC²¹⁵, where the Court specifically states that, ‘the ward officer should immediately remove a hawker in case a complaint is filed by a citizen’; and in a similar PIL Janhit Manch vs BMC²¹⁶, the Court speaks of ‘the street vendors cooking food and causing health hazards to the citizens by creating dirt and nuisance’. The petitioners claim to be speaking on behalf of the ‘public’ who are affected by the ‘nuisance.’ This emphasis on citizens (of a city) creates a scale for determining citizenship.

Holston (2008) argues that the primary politics for the urban community is around the city and forms the ‘basis for mobilization’ (2008, 21). In litigations around different groups of urban poor this is based on a claim on being right bearing citizens versus those without. As residents of a certain colony or formally purchased apartment or houses, the group becomes legally legitimate. The idea of being a resident or a citizen therefore is laying claims to ownership of the property and the legal status. In presenting this distinction between the citizen and the other, the petitioners are implying a hierarchy in the life world of people living in the city depending on their consumption and environment²¹⁷, and therefore the validity of the entitlements to “right to the city.” This also presents a new subset of “rights to the city, as right to access a clean and tidy city, right to a decent life without nuisance, right to a healthy environment, right to planning and order in the city” – as responsibilities of the state towards the citizens of Mumbai, as defined by the residents.

The arguments posed by the homeless, or those petitioning on their behalf, are pointedly used at a different scale for citizenship, often describing the poor as ‘citizens of India.’ The claims of right to the city in their case is derived from multiple intertwined levels of vulnerabilities of the groups and individuals living in the city. They are ‘marginalized groups from scheduled caste communities²¹⁸,’ ‘poor pavement dwellers with no belongings²¹⁹,’ ‘poorest of poor and marginalized in society²²⁰,’ or

²¹⁵ WP 224 of 2011

²¹⁶ PIL 36 of 2010

²¹⁷ See Dupont 2011, Ghertner 2011 and Baviskar 2003.

²¹⁸ YUVA, See fn. 7.

²¹⁹ WP 267 of 1989.

²²⁰ WP 2397 of 2018

‘hapless slum dwellers’²²¹. In “Janhit Manch and others vs. BMC”²²², the Bombay High Court ordered the clearance of ‘illegal hutments’ on the Tansa pipeline, making 6000 plus families homeless. The BMC noted that hutments have been there before 1995²²³ and describes the story of one of the hutment dwellers as – “applicant is 59 years old and came to Mumbai for employment as a daily wage labor. He has a family of six members who survive on his meager income. They do not own any land in the city and the demolition will make his family homeless in a city like Mumbai where he cannot afford a home.” The hutments were cleared anyway to construct a cycling track for the benefit of the citizens.

For the homeless, pavement dwellers and hutment dwellers, the right to the city is often an ambiguous category in the petitions as opposed to the citizens whose claim to the city is significant especially in terms of their contribution to its development. In representing the urban homeless their contributions to the city are downplayed in petitions by emphasizing their vulnerability and marginal economic and social status which remain their only claim to living in the city – livelihood. As argued in the beginning of this chapter, with the case of Malwani, these claims to the city space are based on the right to be constitutionally protected by the welfare state. The state therefore remains the basis for the politics of the urban homeless. In such a scenario with different sets of scales of citizenship and rights claims presented in the judiciary, how does the Court take its position on who are citizens and on what grounds? How are the urban poor or the groups not deemed as citizens pushed into a process of exclusion – political and social and how are these multiple forms of exclusions related to economic exclusion?

Chatterjee argues that the period of pre-independence and post-independence nationalism allowed very little fundamental clarity about the city in India’s future (Chatterjee 2004, 140). This is also structural since only 30% of India is urban and not expected to rise beyond 50% by 2030 (Census

²²¹ CWP 4582 of 2003.

²²² PIL 140 of 2006

²²³ The cut-off date according to SRA scheme for eligibility to get compensation or resettlement on eviction.

2011). The first National Report on Urbanisation was published in 1988 and the Ministry for Urban Development²²⁴ established only in 1994. Social protection schemes and programmes were focused on rural areas, with no equivalent programmes for the urban. The JNNURM launched in 2005 was the largest urban intervention in India's post-independence history, with a focus on "creating world class cities, urban infrastructure efficiency, community participation and accountability of local urban bodies towards citizens." It was the Urban Turn (Prakash 2002) moment that had begun for India. Following the change of government in 2014, the vision for the urban was a modernization policy led by the Central government. The JNNURM was rolled out and replaced by six other urban missions namely –"AMRUT, Pradhan Mantri Awas Yojana (PMAY), Smart Cities Mission (SCM), Swacha Bharat Mission (SBM), Heritage City Development and Augmentation Yojana (HRIDAY) and Deen Dayal Antyodaya Yojana – National Urban Livelihoods Mission (DAY-NULM)" – with other schemes "to improve urban mobility and quality of life in urban areas." In 2018, a "National Urban Policy Framework (NUPF)" was published by the BJP government with a vision statement that reads as follows, "Keeping the national priorities and critical role of urban India, the NUPF envisions urban areas with a distinct identity providing ease of living, responsive governance, sustainable environment, rapid economic growth, and livelihood opportunities for citizens (NUPF 2018, 9)."

What does the growing importance of the "urban as a site of politics mean for urban citizenship", specifically for the homeless? Finally, how do conceptions of the homeless as criminals relate to the narrative of exclusion? I turn to these questions next.

Urban Homeless - Citizens or Criminals

In the previous chapter, I presented how the encroachment of land in a city is for the Court the failure of the planning and development and more so of the authorities who are responsible for keeping the city safe from unauthorized buildings. These encroachments represent for the Court the complexity

²²⁴ Previously called Ministry of Housing and Works and the present one is called Ministry for Housing and Urban affairs.

of realizing the success of planning. In the Court's reading of these petitions, it has marked the encroachments as violations, and problems to be solved in addition to referring to people as an 'encroacher' who have occupied 'public land.' In this section of this chapter, I present how the encroacher is the embodiment of the illegality and how their presence is perceived by the Court. It is the process of the creation of this 'encroacher', and in some cases the 'criminalization' of encroachers, by the State, its authorities, and the judicial rulings collectively that forms the basis of legitimate democratic exclusion of people's right.

In *Azad Hawkers Union*²²⁵ and *Others vs. State of Maharashtra*²²⁶, "the petitioners challenged the court orders and requested the court to direct the government officials to not harass the street vendors." The court's response states, "the purpose of the Street Vendors Act 2014 is to protect the rights of the street vendors and hawkers and also balance the rights of the citizens using the pavements." This reading also tells us that the court marks the homeless as non-citizens and their use of the pavements as violations that need fixing. In the rulings the court refers to the 'encroacher' in the public land who is responsible for the gaps in the city planning and the problems faced by the citizens as a result. In this section I am arguing that the encroacher, represented as an illegality in the city, is denied their rights by the Courts, as well as the police and authorities by constituting them as the anti-thesis of citizens.

Ramanathan (2004) argues that the term encroacher is 'loaded with illegality'. The narrative of encroacher and the citizen are reproduced by the courts like in *SGP Barnes vs. BMC*²²⁷, 'the public at large feeling... [that] despite intervention of this Court, the encroachers continue to commit illegalities and wrongs with impunity. Even the Court is presumed to be helpless and a mute and silent spectator to all the illegalities according to the public.' The PIL was filed by a group of residents

²²⁵ *Azad Hawkers Union* is one of the representative organisations of Mumbai's Street vendors with over 100,000 registered members.

²²⁶ WP 652 of 2017 and PIL 98 of 2016.

²²⁷ WP 73 of 2010 and WP 78 of 2013; Order Dated 20 November 2019.

from a housing society about encroachments on the pavement in Andheri (a sub-urban locality of Mumbai) and the lack of action by the police and municipal authorities in their removal and welfare of residents. Or as stated by the court ruling in *Tulsiwadi Nariman Co-op vs. State of Maharashtra*²²⁸, ‘the government and its agencies are unable to control the encroachers, illegal squatting and unauthorized development on public lands... the number of encroachers and squatters in public land, roads and pavements have increased and the problem is consuming valuable time of this Court.’ The court further places the blame of encroachment on the municipal officials stating that, ‘it is entirely for the municipal officials to respond to the public complains and take corrective actions to remove the encroachers and book them for serious crimes’²²⁹. It is here that I take illegality of the encroacher further to deeming them as criminals reducing the identity of the homeless to a criminal for occupying a space. The simple act of living in a city or, what Ramanathan (2008) calls, the ‘ostensible poverty’, is translated as an encroacher or criminal, often becoming their only identity. This identity often supersedes any other identity or claims made by the homeless as claims to the spaces they live in the city.

Like in the case of Malwani, where I began this chapter, the courts have deliberately chosen to ignore the economic condition (poverty) as well as the social status (caste) of the people being displaced and evicted from within the city. Anjaria (2009) has documented the relationship of the urban poor with the police and the hostile treatment given to them as illegal users of urban space. The police in Mumbai regularly arrests urban informal workers under the BPBA (Ramanathan 2008), displace street vendors and confiscate their belongings. The legality established through laws like the BPBA is entangled with the values that structure the smart city mission or what was formerly called urban renewal mission, forcing the urban poor to create new forms of engagement with the Court, the State, and other actors and institutions that allow them to survive in the city. Legality remains a crucial aspect of this survival. While Anjaria (2009, 392) has elaborated on how the dealings with police

²²⁸ WP 1326 of 2007. Final ruling dated 1 November 2007.

²²⁹ PIL 73 of 2010.

creates insecurities of living in the city as well as the mechanisms for negotiating survival, there is an unequal relationship that leads to the multiple levels of exclusion and criminalization of the urban poor in Mumbai.

Firstly, the target for a law like the BPBA is the urban homeless and their ostensible poverty and not beggary as the name may infer. It is therefore important to understand that in a city like Mumbai, the police, or the anti-beggar squad as they are known round up people from across the city daily and present them before a magistrate of the Beggars' Court in Kurla. The magistrate summarily enquires the officials whether these people are beggars. In these courts the homeless charged with this 'crime of begging' irrespective of whether they are homeless or were caught by the police while taking a break from their informal labour work, have little or no evidence to prove their innocence. No evidence is sought or produced by the court or authorities either and a huge number of people are sentenced by the court for at least a year's detention based on their impoverished appearance.

The urban homeless have little or no access to bathrooms and sanitation, which makes their appearance dirty and therefore makes them vulnerable to arrests. The pavement dwellers mainly work to support their families and are not 'criminals or anti-social elements' as deemed by the State and the Court (Raghavan and Tarique 2018). Like Bhan (2014) articulates in his case for the urban poor in Delhi, 'the impoverishment of poverty' not only denies them their rights but does that 'through an erasure of their vulnerability by criminalizing them, which legitimizes the denial of rights' (Bhan 2014). It is in this process, I argue, that citizenship is reduced for the homeless within democratic politics.

It is through the implementation of a law like BPBA that the Court ensures that the State and its authorities are acting to protect the public from 'encroachers' and 'criminals' who are merely trespassers or anti-social elements. Like in the description of a person arrested under the Act, the

lower court described the poor as “accused...found begging by raising his front paws from the passersby²³⁰.”

The Delhi High Court in 2007²³¹ called the lower court’s actions to send a beggar to Tihar jail as ‘senseless and illegal’. The arrest and conviction of urban homeless and informal workers continue nevertheless. In *Koshish vs. State of Maharashtra and others*²³², the petitioner claimed that 49 women and children aged between 5 to 75 were arrested in a drive to make the city beggar free. The petitioners claimed ‘to be selling articles on the street and not informed about being arrested.’ With no legal representation and no enquiry about their working status in the lower court and no information provided to family about their detention, they remained in prison for over a month. The court’s acknowledgment of poverty and “structural reasons as no access to education, social protection, etc.” came with the caution that ‘the petition does not seek to decriminalize the offence of begging’ but to ‘follow the rule of law and inform the defendant the grounds of arrest.’ The court further observed that the ‘accused were illiterate persons with no legal aid’ and were kept in harmful situations. While the High Court eventually released the petitioners, the ruling on the judgement sympathizes with the petitioners while asking the authorities to follow the protocol in making ‘future arrests’ and improve the conditions of the beggars’ home.

It is between this distinction of encroachment and criminalization that the grounds for denial of rights to the city and as citizens becomes evident. In “*Tulsiwadi Navnirman Coop vs State of Maharashtra and Others*”²³³, the “Bombay High Court” spoke about the smooth removal of encroachment and their right to rehabilitation. They said, ‘There are powers conferred upon the authority for demolition of illegal dwellings. However, what we are concerned about is the rehabilitation of the said occupants. According to the scheme if a photo pass is issued to an occupier prior to January 1995, then the holder

²³⁰ Judgement dated 25 August 2005, in *Ram Lakhan vs. State*, point 4.

²³¹ 137 DLT 173 of 2007.

²³² CWP 2397 of 2018.

²³³ WP 1326 of 2007.

is entitled to protection and entitled for rehabilitation'. The court later says that, 'Rehabilitation will be considered when the pavement dwellers submit a proposal as a co-operative housing society which includes the eligible hutment/pavement dwellers... if 70% or more of the pavement dwellers in a place are eligible for rehabilitation, they may be considered for approval for rehabilitation schemes.' These pockets form vote banks and penal/prohibitory measure are not initiated (against them). The number of encroachers has increased in the city and one can witness the same.' The court has been using encroachment as a reason to deny rights to the urban poor which certainly has consequences for the poor.

In the first chapter I presented the cycle of planning and settlement of the poor and their habitations in the expanding urban space of Mumbai. I argued that the reclamation of land and the promises of rehabilitation to accept the State's failure to care for city people were resulting in the manufacture and replication of space in the city, not just for the poor but also for the middle- and upper classes. The growth of urban squatters and pavement homes paved the way for the creation of the unlawful realm. And it is within these illegalities that the Court was invited by the rights groups to defend and provide for the urban poor, while the State and the authorities seemingly failed. What judicial intervention produced are differential impacts on the illegalities within the city, leading to multiple exclusions.

What are these differential impacts? The urban homeless in specific and the urban poor in general not only represent the failure of the State but also a visible and spatial manifestation of the multiple vulnerabilities. A section of the city which were democratically excluded and empowered at the same time by being 'vote banks.' Their illegality continues to be read through markers of their vulnerability – lack of employment, shelter, access to education, etc. The vulnerability is acknowledged by the courts as well as by the authorities and bodies that are part of the process of criminalizing the very same groups.

In Chapter two, I presented the growth of the PILs from the 1980s through the 1990s, and beyond – an evolution in which the poor has been empathized with, acknowledged as vulnerable and

represented as people living on the margins of city with very little. Before I move to the next section, I want to return to the case that began the discourse on vulnerability of the pavement dwellers in 1985 very briefly. “*Olga Tellis vs. Bombay Municipal Corporation*”²³⁴, led the Court to argue that “right to livelihood is an important aspect of right to life and displacing the homeless and pavement dwellers will eventually lead to deprivation of life.” In 1985 the Court said that people “do not claim the right to live in the pavements or sidewalks for illegal, immoral activities that are contrary to public interest. They pursue humble but honorable occupations.” I have argued in this dissertation that the treatment of the urban poor – through displacement, evictions, and arrests – has witnessed a massive shift from the era of *Olga Tellis*. In the following section, I describe how this shift was possible by erasing this vulnerability of the urban homeless and creating a dominant discourse of aesthetically pleasing urban citizenship in which the poor remain excluded.

Erasing Vulnerabilities

-Proper and Improper Citizens

Shapiro (2009) discusses the issue of citizenship with narratives from citizen activists who object to and question hawkers saying, ‘we are citizens, who are you?’, presenting a clear distinction of who are rightful citizens in a city, thereby resulting in the exclusion of a huge group (2009, 402). Being identified as a ‘citizen’ in a city creating an abstract boundary from the homeless is a part of the process and discourse to make them invisible in a manner that they do not feature on the priorities of rightful urban governance. As Shapiro argues, the attempt is to symbolically and spatially suggest that the urban poor represents ‘narrow vested interests’ while the ‘citizens represent the universal interest of the city’ (Shapiro 2009, 403). This narrative evolved from a resident group demanding the

²³⁴ AIR 180 of 1986.

municipal corporation to remove hawkers who have encroached space in their area or be considered an accomplice to their illegal activities²³⁵.

The ‘union of hawkers’ here makes an often-repeated argument, “the poor are vulnerable and live on meagre incomes, and this vulnerability is the responsibility of the Welfare State to protect.” In *Citispace*²³⁶ and *others vs. State of Maharashtra*²³⁷ the petitioner argues that ‘large areas of open spaces in the city are encroached upon and slums have increased; open spaces are therefore not available to citizens.’ The Bombay High Court ruled that the petitioner be informed of all projects taken up by the State to develop encroached land and the Court can be approached if the developer or State fails to address the objections of the petitioner²³⁸. The demand of the petitioner for open spaces in Mumbai to be encroacher free and for the encroachers to be rehabilitated away from the location in ‘proper homes’ is literally a narrative of development that places the urban poor on the map for being rescued from poverty into a more structured urban life. The Court’s argument that urban ‘encroachers’ are ‘rehabilitated in state-sponsored housing schemes,’ implies that the poor are not excluded and vulnerable any more.

There are two crucial points here: the reduction of the homeless as the ‘improper citizen’ and at the same time erasing their vulnerability and poverty by the promise of assigning them housing in state rehabilitation schemes, which may or may not be realized. The ‘proper’ or ‘structured’ housing signifies a rise in the economic status of the poor but more critically sends a symbolic message of the absence or diminishing vulnerability of the homeless. This is done repeatedly by the courts in cases involving different categories of urban poor. In *Kevlani Mandal*²³⁹, the Court in its interim orders repeated that the ‘illegal occupants’ were using the space for commercial purposes.’ This makes the poor appear less deprived economically as well as suggests they do not need to live in poverty at all

²³⁵ As cited in Shapiro, 2009. Fn 17.

²³⁶ *Citispace* is a Mumbai based collective of citizens/residents fighting against encroachments in the city.

²³⁷ WP 1152 of 2002.

²³⁸ Ruling dated 25 July 2014.

²³⁹ WP 224 of 2011.

when they have an income. For example, in *SGP Barnes*²⁴⁰, the Court points out that, ‘no action has been taken against encroachers by the State, and evictions are ordered since they are not homes of the evictees.’ The city is therefore cleared of the poor. The sites of residence of the urban homeless are seen as spaces of illegal commercial activities and profits, and not sites of vulnerability. The image of the people who live in these spaces, their historic movement to the city and placement in the political economy of the city space is therefore erased.

In the “erasure of the vulnerability”, the ‘proper citizens’ or the tax-paying residents of Mumbai city are constructed as victims. This victimhood helps form a counter narrative for erasing the vulnerability of the homeless. In *Nariman Point Churchgate Citizens Welfare Trust versus State of Maharashtra*²⁴¹, the petitioners described the neighborhood as ‘the most prime locality of the city of Mumbai’ but all the petitioners belonged to the ‘Nariman Point Churchgate Citizens Welfare Trust.’ The judges refer to the residents as ‘tax payers’ who is paying for ‘a corrupt political apparatus.’ Like in *Tulsiwadi*²⁴² where the Court argued that the politics of vote banks is the root cause of proliferation of urban poor and ‘vested interests of certain sections in society.’ The ‘citizens of Mumbai’, the Court argues, are ‘undoubtedly suffering and harassed as a result of the increasing encroachments on public land’.

In framing “the middle and upper class (and caste) residents as ‘citizens of Mumbai’,” the Court implicitly makes a claim to be a representative of the ‘proper’ citizen, a majority, a taxpayer and therefore the ‘public’ in public interest. In erasing the vulnerability of the urban poor, the Court can argue that “the ‘proper citizens,’ the taxpayer, is suffering by the actions of encroachment by the ‘improper citizens’ and therefore deserve the attention of the Court in public interest. With the ‘proper

²⁴⁰ PIL 73 of 2010.

²⁴¹ PIL 101 of 2013. Ruling dated 2 March 2016.

²⁴² WP 1326 of 2007.

citizens' becoming the priority for the Courts, the homeless, now become the cause of nuisance and spread of social ills."

- *Between the Court and the City*

The claims made by the urban poor to the city are based on their vulnerability, which is frequently described as "members of scheduled caste groups, landless labour, pavement dwellers, homeless," or migrants to the city despite living there for decades at a time. In "Dev Chand vs. Union of India" (2007)²⁴³, the petitioner told the court that "the people resided in the slum for over three decades and emphasized their claims of economic contribution to the city." In Dev Chand the "narrative of vulnerability was supported by the claim that the urban poor are essential to city life, provide a major labour force and contribute to the city's economic development." This is one of the rare identifiers of the poor in claims to "right to the city." The primary foundation of rights-based claims relies on vulnerabilities and the context of national citizenship. As was seen in the Azad Nagar case at the beginning of the chapter, the demand for rights is based on the right to be protected and is made not to the city but to the Nation-state, which serves as the primary political actor in the debate. These segregated settings are where the city and issues of urban citizenship are put to the Court.

In the beginning of this chapter, I argued that the courts have used PIL to reframe the idea of illegality, thereby legitimizing their exclusion. Bhuwania (2017, 129) has already argued about the need for 'right kinds of judges' to help the poor and promote distributive justice; and Bhan (2016) about the processes and reproduction of impoverishment marked by the courts' decisions. From the selected cases I have showed how, a) the tension between social and political identities, of belonging to a caste group and being citizens, affect the language of rights and claims to citizenship; b) the criminalization of the homeless through categories of encroachers/crises, becomes a context for denial of rights, spatially and politically within the city; c) by creating a clear divide of 'proper and improper' citizens,

²⁴³ "Dev Chand vs. Union of India CM 6982 of 2007."

and erasing the vulnerability from the lives of the poor, justifying the denial of rights to the city, making the ‘proper citizen’ the rightful subject of urban politics.

I had argued that this exclusion arises not from historic prejudices alone but from the requirement of cohesiveness that democratic rule demands, making it hard to integrate anyone that does not share a common identity based on a rigid formula of politics and citizenship. Yet I argue that this process of exclusion of specific population groups encompasses a larger shift in the politics of poverty. In reducing the impact of poverty as a basis for claims made to “right to the city and to citizenship” itself, the judiciary and the courts have come to become a site for reproducing multiple forms of exclusion. How do the rulings made by the courts on the homeless connect to other aspects of citizenship and poverty beyond the courts? In the final section, I explain the legitimization of exclusion by locating the specific processes of exclusion in these cases in two sites beyond the Court. This helps us understand how the narrative of poverty and the image of the homeless converge between the Court to the city and back, thereby determining urban politics and what these rulings tell us about politics of poverty in the city.

- *The Neo-Liberal Urban Economy*

‘Economic growth and improved quality of life’ is the purpose of Smart Cities mission, argues the latest National Urban scheme²⁴⁴. The advisors of the mission argue that creating smart cities is not only a shift in demographics but an urban transition that places “cities at the center of India’s development trajectory for more cities to replicate and grow on the model of smart solutions.” In the years to come, ‘the smart city will be one which is liveable, sustainable and has a thriving economy.’ Cities, they argue, will offer ‘multiple opportunities to people depending on the diversity of their needs.’ This smart city mission and its visions are only one among the many documents of what I

²⁴⁴ See, <https://smartcities.gov.in/>

refer as an urban scheme or policy, think tank reports among others of the governments missions which are aggressively moving towards the ideology of urbanizing India.

This city had become the central site of the development ideology since 1991 and the opening of markets to the world economy. The post-liberalization era saw schemes like JNNURM, and currently AMRUT spending billions of rupees for developing cities across India, both of which have had similar aims, “developing urban infrastructure and governance and access of basic services to the urban poor.” Mathur (2009) called JNNURM “the most extraordinary shift in India in the approach and thinking about cities and urbanisation.” The shift in the approach can be incidental with the ‘need to align the urban policies in India to the global economic context of the post-1991 era’ as well as reflect ‘the growing role of cities in the national economy’ (2009, 31). The JNNURM and AMRUT both aimed that the cities could contribute up to 70% of India’s GDP and that would need urban infrastructure including electricity, telecom, water, roads and transport systems as well as sanitation and waste management – all made possible through public-private partnerships²⁴⁵. The city became one of the main items on the national agenda post-1991 and continues to remain a focus for political and economic transformation.

Mumbai’s urban economy has been central to this economic growth. The following table presents data from Maharashtra’s Economic Survey (2019-2020) and the structure of Industry in Mumbai Metropolitan region in the period between 2015 to 2019. The data includes four key sectors. “manufacturing, finance, insurance and real estate and business services in addition to trade, hotels, restaurants among transport and communication.” According to the report²⁴⁶, as Mumbai has always been a major financial capital for India and for its national development. I argue that it is perhaps why Mumbai is perpetually creating a fractured labour market with a reconfiguration of its economy

²⁴⁵ See Aggarwal and Solomon 2019 for a detailed overview of fund allocation and use under the AMRUT scheme across cities.

²⁴⁶ See, “https://mahades.maharashtra.gov.in/files/publication/ESM_2019_20_Eng_Book.pdf”

according to the needs of times that suit capital accumulation. This reconfiguration, one should note, has a direct impact on its poor citizens.

(As on 31st December, 2019)

Division	Units (no.)	Investment (₹ Crore)	Employment (Lakh)	Developed Plots (no.)
Mumbai	1,012	20,685	1.39	9,131
Konkan (Excl. Mumbai)	13,745	51,129	4.46	13,184
Nashik	8,589	8,131	1.03	9,152
Pune	13,402	76,522	5.91	26,971
Aurangabad	7,763	11,838	0.82	19,801
Amravati	2,524	7,772	0.38	8,893
Nagpur	3,753	17,934	1.09	9,505
Total	50,788	1,94,011	15.08	96,637

Source: MIDC, GoM

The economic reports over the years have shown that the development of Indian cities and the provision of services will help India ‘achieve its economic potential’ and in the same breath also called for ‘reforms in the current delivery systems.’ The Mumbai Master plan 2034 (MDP 34) has a similar scheme for Mumbai. The current MDP imagines reforms with increased participation of private sector in developing infrastructures for the city²⁴⁷. While Public-Private partnership has been the contour of economic development for some time now, there is a drastic transformation in the state’s control on public services. Provision of electricity and water supply in Mumbai has for years been cited as a crisis that requires strengthening and were among the first sectors in which privatization came through. The MDP 34’s foreword²⁴⁸ states that it “envisions the continuation of Mumbai’s economic dominance, improved living environment and enhanced physical and social infrastructure... The quality of life in a city rest on its economy and equity and we have made every effort to eliminate imbalance in a highly built city with a huge scarcity of land for meaningful adjustments.”

²⁴⁷ See page 151, 156. “https://s3.ap-south-1.amazonaws.com/wp-gmr-assets/Mumbai_Development_Plan_DP_2034_Draft_in_English.pdf”

²⁴⁸ Page 8, “https://s3.ap-south-1.amazonaws.com/wp-gmr-assets/Mumbai_Development_Plan_DP_2034_Draft_in_English.pdf”

This neo-liberal urban economy, reconfigured from the perspective and narrative of reforms – national and urban – creates a political community in the city within which urban citizenship comes to be determined. In this context, the judges are basing their rulings by examining various claims by the ‘proper and improper’ citizens. In a PIL *Satbeer Singh Rathie vs. MCD*²⁴⁹ the Court locates itself in the new urban economy and governance. The petitioners argued that ‘By the 1976 constitutional amendment, power was given to the Honorable Courts to strike down any statute which fails to achieve socialist goals in establishing of a welfare society...’ The petitioners who were being evicted, argued that the government’s failure to build low-cost housing for them represented a violation of the welfare state. The Judges said, “A welfare state is expected to take care of its citizens from cradle to grave. This must change. The role of the State must be one of regulator. That state must create an environment of growth and equal opportunity. Thereafter it is for each to prosper or perish.”

The displacement, arrest, and criminalization of the homeless are all facets of reformation and reconfiguration of the welfare state. In this process of reconfiguration, the city is presented as a space for economic development and achievement of targets via urban infrastructure and increased investments. With a tilt towards privatization, the Government is taking up the part of the enabler and does not remain the site of welfare claims for the poor in a new, free market economy. This creates a double bind – one where citizens are free to decide for their market participation and increase profits and on the other side learn to negotiate access to services without the State support – in the words of Nikolas Rose, ‘self responsabilisation’ (Rose 1999, 19). It is this economic definition of becoming a ‘prosper or perish’ citizenry, that has come to define urban citizenship. The contents of citizenship have witnessed a paradigm shift in what Aihwa Ong calls, “an economic logic in evaluating and protecting certain subjects and not others (Ong 2006, 6).” It is by this logic that the homeless and their vulnerabilities are excluded and their rights and claims to the city remain differential to other ‘proper’ urban citizens.

²⁴⁹ 114 DLT 760 of 2004.

In this chapter I argue that “the identity of the homeless is reduced to being an encroacher, and criminal” even, just like their places of stay are reduced to an encroachment. This process of reducing their presence is a part of creating an aesthetics of the city, something that Fernandes (2004) calls ‘an urban aesthetic of class purity’ and in the Indian context of caste purity as well, which leads to invisibilisation and criminalization of the homeless, in the best and worst cases respectively. As the homeless are reduced to illegal, improper citizens, their exclusion is operational by the absence of their identity, context and history, residence in the city. The visuals of the modern city create a norm that create a standardized norm of aesthetics that determine legality. In a bid to transform into a World City, the image of Mumbai is created by the elites as one of consumption, luxury, modernity and global standards, an image that resists and evades the poor.

In the process of forming this aesthetic “World Class city,” consumed by an international audience and market, the city itself has become the commodity for consumption, where public space and urban socio-cultural debates are aggressively claimed and dominated by the middle and upper classes. One could argue that it has always been like this, but with the increasing presence of the Judiciary, the conspicuous absence of the Welfare State, and the dominance of the middle and upper classes in governance, there is a definite shift in the paradigm of exclusion of the homeless.

- *Citizens’ Participation in City Making*

In 2015, the BMC invited the ‘citizens’ to be a part of the Smart City plan. The municipal corporation announced that it would need citizen participation to develop Mumbai into a Smart City ²⁵⁰. According to the plan, it aims to create innovations in public services and address ‘common issues that impact the citizens in their everyday life.’ The main services they aim to address include – e-governance, water management, sanitation, smart mobility, and public health service. Now who does

²⁵⁰ “<https://portal.mcgm.gov.in/irj/go/km/docs/documents/Smart%20City/Smart%20Cities%20challenges%20-%20MCGM.pdf>.”

the BMC imagine to be citizens? Citizens could provide inputs via email, Facebook, and the government website.

The scope of the topics and the medium of participation imply that the citizens are defined by a spatial, social, and political legality. Being able to access and participate in governance is based on the citizens' ability to use these online forums. This inevitably leads to the exclusion of a huge population living in the city, since the scheme imagines the citizen to be an embodiment of the objectives of the program itself. It is here that a key aspect of the discourse gains focus: encroachment. The BMC aims to find solutions to 'the problem of encroachment' in the city along with the citizens and make the mission of Smart City a success.

The 'citizen,' the 'encroacher', are ideas that commute in the politics of the city, in building its aesthetics. The ideas are reproduced in the Court and the city and at the same time in the rulings for public interest as well as in municipal governance schemes that create and normalize exclusion. In this process of production of the city as a site of politics, of legality and legitimacy, one can view a socio-spatial transformation – one that Holston (2008) calls differentiated citizenship. In focusing on differentiating citizens and not equating them (Holston 2008, 26), inequality - social, economic, and spatial - becomes institutionalized and legitimized.

The Convergence of Citizenship and Exclusion

It is worth returning briefly to the landmark 1985 judgement of the Supreme Court that held precedence over cases related to the urban poor. In *Olga Tellis*, the Supreme Court observed that, "the homeless do not claim the right to live on pavements for pursuing illegal activities that are conflicting with public interest. Most of them pursue humble but honorable occupations." It was the advent of the millennium that marked a shift from this era, through "the erasure of vulnerability of the poor" and an urban politics from which the poor are excluded. In India's urban context social cleavages of caste, class, religion, and region are distinct and highly politicized, performative

explanations have been dominant over structural detailing. Studies on urban spaces have often pointed towards the middle classes and their role in producing exclusion (Fernandes and Heller 2006; Harriss 2007). This has been in the form of spatial exclusion by confining the urban poor to illegal/informal settlements as well as hoarding of municipal services like water, sanitation, housing, and others in favor of the middle classes (Ghertner 2015; Chaplin 2011).

Through PILs and the beggary law, I have presented the representation of the homeless in the political imagination of poverty and the making of the illegal encroacher here. I further argued that the processes of exclusion and claims to citizenship emerge from the Court and the city and converge. I argue that it is this discourse that enables exclusion and allows its reproduction over the years, also legitimizes perceptions of poverty itself in the city. I now define the legitimization of exclusion as a compound of two major trends – a) a deliberately altered image of the poor that erases their vulnerability, criminalizes them amidst a broader denial of their rights as citizens; and b) the emergence of a class of citizens and a notion of citizenship that challenges poverty as a political claim to rights and entitlements in the city.

The legitimization of exclusion is performed across scales and geographies in various forms. In the city, the legitimization brings out the complexity of the urban space as a site for citizenship as it becomes an important political and economic site. The evictions and criminalization of the homeless are also reminders that the city as the new scale for citizenship, is also a site as Holston (2008) describes ‘the legitimization of inequalities.’ As a process that prevents the homeless to make claims of right to the city, this legitimization poses a serious challenge for inclusive politics. The impoverishment of poverty also remains a grave challenge to claiming rights to the city for the homeless, despite being a vital aspect of recognizing and initiating inclusive urban politics. It is only by recognizing these challenges and the processes of impoverishment in the city, can one begin to envision new forms of policies that will be inclusive.

In the national discourse on development in India, the claims to welfare since independence have been based on the narrative that the poor represent Indians – the expanse of poverty demanded it to be a priority in distribution of resources. Therefore, a narrative that includes the poor and impacts poverty needed to be a part of national development. With the transformation of the development narrative from the country to the city, catering to the middle and upper class ‘citizens’, undeniably urban, the accumulation of urban resources had to be legitimized. Understanding citizenship as a historical and ongoing process, citizenship is not only about inclusion and equal rights but also about exclusion and inequalities, despite its universal semantics.

Interestingly Sen’s Capability Approach (2000) aims at dealing with inequalities while also acknowledging differences. The Capability Approach can be used for building a comprehensive framework based on “the human rights perspective to tackle issues of exclusion and in redefining citizenship” in the human rights discourse. To protect human rights for all focusing on the neglected aspects, the capabilities approach is a practical methodology to draw attention to the fact that people threatened by exclusion exist despite schemes, policies, legal programs, and protection to deal with various issues. While exclusion has been studied as a social and economic question, it is also a legal question and that aspect of exclusion must be explored by breaking normative barriers in the system, linking petitions, lawyers, activists, judges, administrative workers at a local level. I have suggested that the capability approach is one of the best ways to understand spatial exclusion faced by the urban homeless and spatial exclusion best seen as lack of capability. A planned political strategy that builds a collective movement involving all stakeholders could address multiple layers of exclusion arising in the system. While this argument does open methodological questions for future researchers, the questions on citizenship formation and the operationalization of a capabilities led approach, on issues of exclusion helps to bring some optimism in an otherwise cynical discussion.

4

Chapter Four

**The City and Activism:
Responses and Resistance**

Zahira was arrested by the police from Mumbai's major railway station on the day she was discharged from Cama hospital. It was the end of May 2018. Zahira, a 52-year-old fruit seller from Amravati, was taking treatment for skin disorders in Mumbai's Cama hospital. On the day of arrest, she was discharged in the morning and was at the station to take a train back to Amravati. Assuming that she is a beggar, the police arrested her under the BPBA 1959 and took her to court, without telling her why she was arrested or giving her the opportunity to speak or explain herself. On the way to the Kurla Metropolitan Court, Zahira understood that the police had mistaken her for a beggar from their conversations and looking at the other women in the van. According to her, 'A team of policemen pulled me towards the van while I was waiting to buy a ticket. I asked them repeatedly about why and where they were taking me but they did not utter a word. I told them that I am dressed badly since I did not have spare clothes as my family did not come to receive me from the hospital and pleaded with them to let me make a phone call to the social worker Chetan, who helped me get treatment for my skin disorders but to no avail'²⁵¹. She was asked to pay a heavy fine in court or stay at the Beggars' Home for a remand period of seven days. With no money in hand, she was forced to stay in the beggars' home, which is a prison for those arrested on the charges of beggary.

Zahira recounts her experience of being presented in Court, where the judge would not even speak to the people presented by the police. She narrated how the judge declared remand or release based on what was said to him by the officials of the beggars' home, who had not even spoken to her. In the beggars' home, she was able to meet social workers from an organization, Koshish, a project working for "the repeal of the beggary laws" and humanizing the Beggars' Home for over a decade. The social workers got in touch with Chetan, who in turn produced her documents and arrived in Mumbai in the next two days to get her released on bail from the Court and took her home to her family. Zahira and thousands of others like her are arrested daily, in Mumbai. Police vans come, stack people into the

²⁵¹ Personal interviews dated 3 June 2018, translated from Marathi to English.

vans without a conversation and produce them in court, only to find themselves in prison the next day – without a job, without any connection to the outside world, their friends, family, or employers.

Koshish has been working for the legal rights of the persons arrested on charges under the Beggary prevention law. After speaking to people in the remand homes, the social worker gets in touch with their family or employer in the city or through phone calls to the local police, to trace their addresses, if they are based out of Mumbai. This mechanism has aided the release of lakhs of people wrongfully arrested under the law²⁵². Bypassing the official procedures followed by the prison officials, Koshish intervenes directly with the Court to get Court orders for release by presenting an investigation report of their social worker along with the police chargesheet. This process usually takes two to three working days in a seven-day remand period issued by the Court, after which the person is released on bail or on account of wrongful arrest.

Zahira had said she had a realization – ‘I thought about my arrest and it occurred to me that I should have dressed in the colorful salwar kameez and waited for one of my sons to pick me up from the hospital. I did not realize not dressing up would lead to me being treated like a criminal’. In response to a PIL filed by Manjula Sen in 1990²⁵³, the Court noted that, “arrests are made of people in dirty clothes, wandering but not actually begging. Large numbers of wrong arrests are made, which is inhuman and unjust and there are no criteria to distinguish a beggar from one who is sick, physically handicapped or in need of economic support.” From 1990 to 2020, little has changed in the method of implementation of the law. It remains a measure of social control, keeping the homeless in the “zone of illegality,” enabling exclusion.

This dissertation has so far discussed how the Court affects homeless people's lives, questioned how public interest is defined, explored the tension between exclusion and inclusion, and explained what

²⁵² Notes taken from the Koshish team in Beggars' Home in 2017. Actual annual statistics were not shared by the Beggars' Home officials stating the official information from the Beggars' Home files need permission from the Court and Koshish worked as an ally helping the Beggars' Home manage the cases and therefore could not reveal further details.

²⁵³ “Manjula Sen v. State of Maharashtra. WP 1639 of 1990 in High Court of Bombay.”

it may teach us about urban politics, poverty, and citizenship in the city. In this last chapter, the emphasis is shifted from the court's decisions to how they affect homeless people. It asks three main questions – How do we understand the engagement and resistance of social movements/activists in their response to Court orders? What are the strategies, forms of struggle they use to claim rights and resist the Court orders? It follows Zahira's contemplation – how does a working person, capable of protesting and speaking for themselves, land up in Court and later in prison and become invisible in the process of criminalization?

Taking from a sequence of interviews with “activists of urban social movements” from the late 1990s until 2020 in Mumbai, this chapter presents how Court orders - in the case of the beggary laws specifically – make visible the process of criminalization and the various “forms, claims and strategies of urban social movements in advocating for the rights and citizenship” of the homeless. The Court emerging as an important site for negotiations leads to the choices used by activists, to modify content of their claims, decision making processes and “shape the political identity, narratives, and history of the city” and the homeless themselves.

There are three primary divisions in this chapter. The first establishes the central contention in a series of talks including the activists' allusion to the rights of the city and the function of urban social movements in achieving these rights. The second section examines and evaluates the tactics of defiance employed by activists in Mumbai's Beggars' Court during the past ten years to comply with court rulings. The Court's dynamics as a site of resistance are examined in the last section, with a focus on how they affect how we conceive about the rights and citizenship of the homeless.

Two primary archives are used in this chapter. The first is a collection of 10 interviews taken between 2014 to 2020 with activists from non-governmental organizations and voluntary associations, community-based groups, lawyers, and academicians as well as Beggars' Home officials who have been the key figures in the organisation of resistance against arrest and detention of the homeless in Mumbai. Each of the interviewees have requested pseudonyms while presenting their cases for the

homeless. All of them are in some capacity connected to the Homeless Collective, a collective that organizes and gets people together on rights and issues of the urban homeless in Mumbai. Each interview was done in a combination of Marathi, Hindi, and English. Activists who are relatively fortunate, do not live in slums or on the streets, and make up more than half of the respondents have been assisting the homeless for more than ten years. The interviews discussed in this chapter are all translated into English by me. Some words in Hindi or Marathi have been retained to reflect the original interviews.

What is important to note is that this set of interviews has been chosen from the interviewees' understanding of themselves as participants of an urban social movement attempting to respond to arrests and detentions in the city, despite not being affected by it in their own life and living. What the interviews do not represent is an extensive account of those who are arrested daily from the streets of Mumbai and undergo the trials of court and detention. This chapter is therefore an analysis of legal activism (sometimes in a loose sense), rather than a narrative of resistance within the institutions like beggars' homes. The interviews are with academicians, lawyers and officials of the State involved in supporting the activists and the homeless in their own capacities; filing legal petitions and being activists beyond the law, leading investigations for release of homeless, drafting policy and creating a discourse in the university/colleges around the subject. All the respondents are Mumbai based.

The second archive draws upon pamphlets collected during field work between 2014 to 2019. Those pamphlets were used for distribution during various demonstrations and instances of political action. Most of the content of these pamphlets has been drafted by activists in the Homeless Collective²⁵⁴. The use of pamphlets is common across social movements in India, usually printed on bright paper with bold letters, handed out to people in thousands or held up along with banners during rallies on streets and offices. The main agenda is to sum up the key message of the protest from the organizer's

²⁵⁴ Homeless Collective is a forum of NGOs, Community Based Organisations, Professionals, Advocates and concerned individuals. It defines itself as a collective which came into being with a common objective to guide the urban homeless for their struggle in the realization of their democratic rights and aspirations in the city.

perspective to the public, often the spectators. The pamphlets therefore are aspects that present the political mandate of the urban social movement making them complementary to interview with stakeholders. I must reiterate here that this chapter focuses on how the activists and homeless respond to the Court in creating resistance. I already detailed in chapter 2 on how the homeless are rendered as illegal, illegitimate, at times encroachers, meaning they have little or no claim to lands via the law, which is not the case for slum dwellers, for example, who have some extent of legitimacy in the eyes of the law. Therefore, the context and conception of resistance in the case of the former could be different.

“Rights to the City and In the City”

When one thinks about “the conception and practice of rights in the context of the city, within the academic literature and in policy practice”²⁵⁵, “the Right to the City is a crucial framework” through which many urban social movements push forward the agenda of urban inclusion and social justice. Henri Lefebvre (1968) wrote about “the right to the city in the 1960s while arguing that the city was becoming the main site of capital accumulation. He had predicted that the city would be dominated by exchange value instead of use value and it is in response to this shift in the modes of production that he discusses the right to participation and appropriation as a claim to the city (Lefebvre 1968, 102).” David Harvey (2008) describes it as, “the right to the city is not an individual right but a collective one, since the urban transformation depends on the exercise of collective power to reshape the processes of urbanisation (Harvey 2008, 23).” For Harvey, “the right to the city must be adopted as a working slogan as well as political ideology because it focuses on the question of who holds the connection between urbanisation and the production and use of surplus (2008, 40).” What therefore

²⁵⁵ In the year 2004, “many international organisations, led by Habitat International and later supported by the UNESCO and social movements, at a meeting in the World Social Forum drafted a World Charter on the Right to the City. See here - https://www.hlmn.org.in/documents/World_Charter_on_the_Right_to_the_City.htm”

is the operationalization of the political ideology that Harvey refers to, and how do urban social movements respond to it?

Peter Marcuse argues that, “for the right to the city to be realized, it is necessary to explore the question of whose rights are in question, who are the potential stakeholders, the agents of change and what affects them either to propose or oppose basic change (Marcuse 2009: 189).” It is pertinent, he argues, to question, “Who will lead the fight? Who will most likely support it? What will be the reasons for support?” Harvey has argued that, “it is a challenge to define who the agents of change will be in contemporary times and will vary from one part of the world to another (Harvey 2009).” In his work on citizenship, James Holston (2008, 2009) argues that, “it has not been, like Lefebvre expected, that the working classes of the cities of the North Atlantic brought about the right to the city. The basis of this right, Holston argues, comes from within the urbanism in cities of the South where the right to the city finds some realization (Holston 2009: 247).” It is in these cities, Holston argues, “that people organize movements of insurgent citizenship to confront those regimes of inequality that the urban sites use to segregate them (2009: 245).”

Susan Parnell and Edgar Pieterse argue that, “the notions of urban citizenship have been little applied to the question of how cities may be governed (Parnell and Pieterse 2010, 148).” For them, “the challenge of using a rights-based approach amidst the urbanisation of poverty underscores the need for an engagement with the State and downscaling of the State to the city (2010, 146).” Zerah et al (2012), “describe this approach as a reformist take on the right to the city which Parnell and Pieterse describe as rights in the city. The rights in the city are a group of rights that can be obtained only by engaging with the various actors of the State (Zerah et al 2012, 2).”

For Parnell and Pieterse, “it is the socio-economic rights like housing, livelihoods, shelter, services like health, etc., that need this engagement and requires bringing the State back to developmental discourse in a way that tackles the appropriate scale at which the government can act to support the realization of the rights (Parnell and Pieterse 2010, 150).” They are writing “against what they see as

the marginalization of the State as a development actor through the undifferentiated charge of neoliberalism.” For the purpose of this chapter, “it is their analysis of the nature of engagement with the State that needs to be noted.” They argue that, “citizen action that relies exclusively on an oppositional logic or political stance of perpetual resistance is unlikely to achieve reforms in the mundane functioning of the State, and can be a pre-condition for the cumulative changes that can transform the political economy of opportunity and provide institutional access to resources (Parnell and Pieterse 2010, 158).”

Colin McFarlane describes “this relationship with the State using the idea of spaces of political engagement (McFarlane 2004).” Commenting about the “Mumbai-based Alliance of SPARC, National Slum Dwellers Federation, and Mahila Milan”, who are commended for their participation in community-led relocation as well as the self-provision of toilet and sanitation facilities²⁵⁶, he argues “that these spaces refer to space of struggle and negotiation between the alliance and the authorities which are not one-time meetings or events but a continuous attempt to frame relations between each other (McFarlane 2004, 894).” For Margit Mayer, “such an engagement represents improvements for the homeless. She argues that unlike the Lefebvrian notion of right to the city, the institutionalised approach to rights boils down to claims for inclusion in the existing system as it is without transforming the system (Mayer 2009, 369).” Questions about the nature and function of resistance are at stake here. Can inclusiveness that questions power structures lead to systemic transformation from the inside out?

In 2005, a series of violent evictions of pavement dwellers from Bombay resulted in the displacement of over 300,000 individuals, bringing the conflict between “rights to and in the city” to the forefront. Despite widespread public condemnation, the Alliance did not launch a movement of widespread opposition. It said that, “our experiences in the past and the outlook of the homeless communities that we work with have propelled us to eschew the path of righteous indignation and protest (Mitlin and

²⁵⁶ See Appadurai 2002, Patel et al 2002.

Patel 2005, 3-4).” The Alliance argued that, “we have learnt from these communities that the only way at present, the poor can 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 a protective legislation. As irrational as 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 argues that, “the work of the Alliance, with its focus on dialogue and negotiation can also be understood as that politics of compensation – that creates a distinctive political subjectivity (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 (Roy 2009, 173).”

This chapter's focus is the conflict that exists between negotiation and confrontation as forms of interaction and how both modes relate to people's rights in and within the city. Seen from the perspective of urban social movements within an institution like the Beggars' Homes, how do we comprehend this relationship between “negotiation and confrontation?” In the context of arrests of the homeless, we must ask further, do arrests signify a marker of engagement? Or do they symbolize failure to engage? What do arrests tell us about the possibilities of insurgence?

The link between negotiation and confrontation as civic methods employed by the homeless to stake their claim to legitimacy in the city is further complicated by the Court's development as a location of participation. The query changes. When the letter is taken to refer to the institutions of representative governance, the writers cited above evaluate the nature and scope of either dialogue or conflict with the State. But is it possible to engage in a "war of attrition" with the legal system? What does it mean to bargain with or go up against the Court? What are the possibilities of such a politics? What are the strategies and tactics employed? It is these questions that I aim to discuss in the following sections.

Approaches of Resistance

“I remember,” said M. Tarique, as we sat in the TISS campus in Mumbai, “more than anything else it was the extent of it all. I was so stunned. I do not think people even understood what was happening to/with them²⁵⁷.” Tarique was describing the arrests in Mumbai that he witnessed when he started working the Beggars’ Home in early 2009-2010. ‘Over 300 people were arrested daily for over three months from different areas of Mumbai Metropolitan Region – and at least 150 were detained and sent to one of the 14 receiving centers in Maharashtra that housed those convicted for beggary’.

Tarique is the founder of Koshish²⁵⁸, an organisation that is one of the oldest in the city of Mumbai working on de-criminalization of the homeless, wronged by laws like the BPBA 1959. Koshish has had a significant presence in advocacy and lobbying for the rights of the urban homeless in Mumbai and Delhi. ‘Nothing is very clear. The police pick up people based on their perception of who could be a beggar, someone who is dressed shabbily or is whiling away time outside a temple or a mosque, or does not look very clean is picked up. Most times the police pick up people on orders of cleaning the city. With no need for an arrest warrant or explanation to those arrested, the BPBA 1959 becomes the easiest tool at the hands of the police to get their work done. There are special beggary squads all over the city only to pick up people. The fact that the police can use the IPC to arrest people who do in fact beg and force others to beg is often overlooked. Since activating the IPC requires work – filing an FIR, making an arrest warrant, thorough investigation, and research before filing chargesheets – the police do not take that route.’

Tarique was right. The arrests take place arbitrarily from the streets. Men and woman are pushed and pulled into the police van by plain clothes policemen and presented in front of the local magistrate in Mumbai’s Kurla Court, what is also called the Beggars’ Court. Standing in line in the corridor packed with people, all waiting silently to know their fate. On their turn, they are ushered in front of the Judge, the police claim they were begging and demand a conviction through the chargesheet and the

²⁵⁷ Personal interview, dates 12.2.2016.

²⁵⁸ See, <https://tiss.edu/view/11/projects/koshish/>

judge detains them to the Beggars' Home. Nine out of ten who are detained are informal or homeless labourers, caught for no real reason other than their ostensible poverty. Delhi High Court decriminalized begging in the capital ruling that the law violated fundamental rights, but in Maharashtra the law continues to criminalize the homeless. A PIL filed by Koshish seeking review of the law is pending in the Bombay High Court. 'There are very few organizations or alliances that take up the cause of repealing the law. I keep thinking how the State can be so cruel to its own people. The judge keeps churning conviction after conviction and that is when I decided to intervene and work from within the institution and with the Court,' Tarique said.

"There is never a consensus within the movement on how to respond to the threats of arrest," argues Tarique. For him, "the division were between what he calls institutional groups on one hand and community groups on the other. Institutional groups like lawyers and NGOs, could not think of how to fight, there is a strong section of legal types within the urban movements, lawyers, and activists themselves who cannot set aside the system." As for the community-based groups, they are the ones who stand to lose the most and yet it is a challenge to get them all together, since how much can one protest from within these institutions and once, they are out, it is hard to keep track of them and organize resistance movements on field. "The only way to register any resistance is through advocacy and data that we gather through our work. In all the arrests and detentions, I have seen," Tarique argues, "It very quickly fragments into people who have a better chance to get released and those who do not have a chance at being released, say due to mental illnesses, disabilities, or the inability to simply remember their address and name and tell the social worker about their whereabouts and family or employer. There are only a few days for us to investigate hundreds of people's information and present to the Court why they must be released. The chargesheet of the Beggar's Home and the police and our own investigation report attached to it is presented in Court and the decision is made." In one sense this is not a confrontation that Tarique and his team at Koshish desire for but to negotiate and secure a place in the legal processes that benefits the homeless and helps Koshish build a case

for the repeal or amendment of the law. This approach to negotiating, instead of confronting, Tarique says, ‘is a lesson I learnt early on as a student of Social Work. If we want to simply protest, we cannot explain the situation or speak to the State and the Court. The arrests would neither decrease nor stop.’ As Roy noted in the case of the Alliance, “negotiated development is not a mandate but a strategy of citizenship emerging from the experiences of the urban poor (Roy 2009, 164).”

Another interpretation of how people react to arrests offers a different strategy, one that depends on the negotiation skills of the residents of the Beggars' Home. In the case of Zahira that I started the chapter with, an activist echoed Zahira's views – “gareeb logon ko police criminal samajhti hai (the poor are viewed as criminals by the police). There is no consensus among the working class, they know they are vulnerable – the daily wage laborer, the homeless, construction worker, domestic workers. It is not possible. They work all day or night and the rest of the time find a place in the city to sleep – it could be near a closed shop, railway station, pavements, old train bogeys, or even on the divider on the road, when they get arrested by the police. They are not united by any collective, so how will they negotiate or even resist arrest when they are not aware of why they are being taken away?” This view is significantly determined by an understanding of layers of vulnerability within the homeless in Mumbai. The ability to recuperate from the effects of being criminalized, as well as the capacity to communicate with authorities to get release, are factors that depend on one's situation, such as whether they are homeless, elderly, or crippled. As a result, various groups among the poor have varying entry points to political involvement spaces along a number of rifts that the arrests both signify and exacerbate.

The fact that the arrest warrants are issued by the Court adds another level of complication that should be taken into consideration. Shekhar Singh belongs to a group that promotes the social security of urban homeless people in Mumbai.²⁵⁹ Speaking of arrests in 2015 in Paydhonee²⁶⁰, Singh recounted

²⁵⁹ Personal Interview, dates 03.04.2016.

²⁶⁰ One of the main spots in Mumbai where the police arrest the urban poor.

a story of negotiation. ‘It was the time of Ramzan and people living and working in the Masjid bandar area know that the police arrests people and takes them to jail in Chembur. There were thousands of people offering prayers and the police would come and pick hundreds of people in their vans. The group had some people who had been picked up by the police previously and they requested to be arrested after the evening prayers were done and leave the mosque like humans (*insan ki tarah*). They did not want the police to forcefully take them and create ruckuses. Singh’s remarks lead us to the question – why did the people of Paydhonee decide to enter such a negotiation, to get arrested and not escape? Singh was categorical that for them release after arrests was an option, since they were aware of the law and had been arrested before and treated inhumanly, the difficulty of being in the jail, the loss of employment, the stigma of being a criminal, the suffering of the family and children and loss of livelihood – were all experiences of the people living there. I asked him then if people were aware of the arrests why did they not move from there or live in proper homes? ‘Because they cannot afford to rent homes or afford to commute from faraway places in the city for work every day. Plus, they know that there is a social worker (referring to the Koshish team) inside the Beggars’ Home who would help them get a Court release order after arrests.’

Singh’s words suggest that “the fact that arrests were understood to be ordered by the rule of law and the release determined by the Court, rather than a governance body, influenced the perception of the possibility of selecting one of the diverse modes of engagement. The Court ordering for release based on a social worker’s report is influenced by the success of a negotiation process rather than confrontation.” Shahnaz Ahmad, another activist, echoed a similar sentiment, ‘The Court orders are difficult to stop, so we know that the only way is to engage with the judges and lawyers. When the Court orders release, the police and the Beggars’ Home officials throw their hands up and must release people, whether they like it or not.’

Solomon Benjamin and Bhuvaneshwari Raman have argued that, “the paradoxical situation where the homeless agree to forms of negotiation must be seen in the context of the new political and reforms

milieu where a climate of the fear of arrests and the trauma of criminalization curtails the choices of the poor (Benjamin and Raman 2012, 71).” The narratives presented in this section add on to the analysis of Benjamin and Raman. They suggest that, “multiple axes of vulnerability as well as multiple forms and degrees of exclusion determine the relationship between confrontation and negotiation for the arrested as well as for the activists.” Tarique’s and Shekhar’s accounts suggest “a complexity to how the homeless respond to arrests and the presence of the Court and its orders seem to turn Benjamin and Raman’s expression, to curtail the choices of the activists.”

Courts – Sites for Resistance

How is opposing a court different from protesting the government? “As a metaphor for the relationship that activists in urban social movements feel they have with the Court as a site of protest, activist narratives of resistance present a sense of distance from the Court that is both a literal expression of barriers to access legal processes and a literal expression of the activists' relationship with the Court.” The Court, as a state agency that occupies a distinct political place in the lives of the homeless and so creates various venues for political activity, as well as the character of court procedures, both play important roles.

The Homeless Collective has frequently protested governmental organizations and local authorities including the BMC and NMMC during its history. Despite Court ordered arrests and detentions, it did not demonstrate against the Bombay High Court even once. It did extend its solidarity to a Delhi based alliance called Sajha Manch in 2007 in one of their demonstrations for awarding resettlement to slum dwellers in the Supreme Court called, “Samvidhaan ko Yaad Karo (remember the Constitution).” It was a protest based away from the city that the Collective was based in and did not require the members to be physically present. I asked Pradip Kamble, another activist of the Homeless Collective, “why protesting in front of a Court was seen to be so different from protesting in front of the BMC office.” He said, “it had been difficult to ‘mobilize people to agree to protest outside the Court.” According to his reasoning, “it is our right to fight the executive but it is not our right to

protest the Court. You can approach the Court for any kind of violence or harm caused to you, but protesting the Court is humiliating for the country. You go against the Court when you have been seriously wronged, so we try to find a way to negotiate²⁶¹.”

Gautam Bhan (2009) recounts that thousands of people had marched against the government under the leadership of the former Prime Minister V P Singh to protest homelessness, eviction, inflation, and unemployment – all brought together by the Sajha Manch. His description of “rallies outside the Supreme Court with only a few hundred participants alongside activists from the Sajha Manch, however, creates a contrast.” The activists differentiated between protesting in front of the Court and against the government. “It is the responsibility of the government to provide facilities to the people, and if they do not, it is the people’s right to protest the government. But with the Court there is some fear. The lawyers were also afraid of contempt (Bhan 2009, 133).” Raghav Ram, one of the founders of a research and advocacy center on urban issues in Mumbai held another perspective on protesting the Court²⁶². He argued that there is no fear of the Court but the lack of consensus and divisions in the collective itself. “A group like the Homeless Collective,” he argues “is divided between funded NGOs and the people and committees within the Collective who form their own politics. Middle class individuals prefer making sub-committees to make decisions around arrests, evictions or other trouble caused by municipality officials to the homeless, while the people themselves did not like the idea of committees that prevented open, public discussions and were exclusive.”

Like the narrative offered by the Alliance, for Raghav Ram, “the banner of ‘stop arrests’ emerged because a lot of middle-class NGO individuals got involved in the campaigning and took the advocacy in a different direction.” “It was these individuals,” he said, ‘who had a sense of faith in the system that privileged the Court as a site of resistance.” He argues that “the homeless themselves did not see the Court as a site where they could put forward their demands and speak up.”

²⁶¹ Personal interview, dated 04.04.2016.

²⁶² Personal Interview, dated 06.05.2016.

“These stories all seem to have a connection to the Court as a place of politics and resistance. The other offers an alternative reading that contends that the Court is an institution that the homeless did not relate to and sees as a site of engagement for the middle classes. The first suggests a division in perception of the right to fight the Court in contradiction with an almost obligation to fight the government.” The pamphlet written for one of the protests links these narratives. Unlike most pamphlets written for protests, it contained no charter of demands – instead urged the Court, the parliament, and the government to bring constitutionality in its ways of working with the poor. It also listed court cases against the homeless that had caused a loss of livelihood to them. It read, “those who work as beggars, waste pickers, recyclers, hawkers, and domestic workers – have all faced the brunt of the Court. Is this what is written in the books of justice, that the poor are the only ones who are dirty?” Yet, the demand that follows this claim is a reminder of the separation of powers rather than a request for the Court to reconsider its rulings on detentions or decide in favor of the working poor. It 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 people should be left to the government and the Courts dispense justice?”

This stands in stark contrast to the rhetoric employed in anti-government flyers, where the list of requests calls for the government to step in and fix their issues. For instance, another pamphlet that strikes with an anger that is absent directed at the Court reads, “the rulers want Mumbai’s streets to be erased and cleaned of slums, footpaths, and the poor. They want fancy cars and fast food. Who makes these policies? Who are these white-cloth wearing leaders? What do they know about the poor in the city, and how we live and raise our families? Why should we trust them when their vision has no place for the laborers and workers, women, and children? We will make our own city! (Homeless Collective 2016).”

In one of the landmark Supreme Court judgements, “S P Gupta vs. Union of India”²⁶³ 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 the High Courts and the Supreme Court of India. He did so in order to enable those in a socially and economically disadvantaged position to access the Court for relief. 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 it was said that the ‘Court treated even a simple letter as a petition’²⁶⁴ taking upon itself the costs of litigation as well as the work of gathering evidence. The Court also allowed parties not directly affected to speak for and represent the interests of others, presumably the poor. PILs thus opened the door for ordinary citizens to approach the highest Courts of the land in matters of public interest either to bring forth the cause of the poor or to seek enforcement of performance of public duties and it also imagined civil society associations, NGOs, and individuals to speak for the rights of others.”

Notwithstanding these developments and a long history of active urban social movements employing PIL within the Courts, one criticism that keeps coming up from the activists is a feeling of tangible and symbolic remoteness from the Court. “You cannot walk into a Court and ask it what it is doing,” argued Roshni, a member of the Prayas, an organisation that works inside prisons for prisoners’ rights with a focus on undertrials in Mumbai²⁶⁵. “People go to the police and the BMC offices, as there are spaces, they feel they can enter and talk to the people there. At most times during evictions and cases

²⁶³ “S P Gupta v Union of India AIR SC 149 1982. This was a case of judicial accountability and the system of appointment of judges – a post-Emergency topic of critical importance – brought to the Court by lawyers, not judges. The lawyers for the Union of India argued that they had no locus standi, i.e., they weren’t affected parties since their own appointments were not the matter in question. The Court agreed that the lawyers had a right to raise an issue of significant public interest.”

²⁶⁴ “Letters to the Supreme Court treated as PILs in Sumit Batra v Delhi Administration 1980 3 SCC 480, 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, among many others.”

²⁶⁵ Personal Interview, dated 07.09.2016.

of displacement, there is also a confusion about the notice, if it came from the Court, or the BMC. People spend their day in the BMC office and do not know the Court is involved but there is no direct way to interact with the Court or make contact. This makes it harder to know what can be done.” Roshni argues that this strategy was maintained by controlling access, “the BMC is a government run body with which people have always had contact. There are BMC offices that they can visit. When I say Court, what do I mean? Lawyers? Or only lawyers who file PILs? So even if I can find a lawyer, when something goes to Court, the people cannot do anything with the result. The Court is a distant dream for them, and if they know something, it is only through the lawyers.”

Vijay Raja, “a lawyer who filed a lot of cases in the Mumbai High Court to prevent evictions and arrests of the homeless” has a similar view. “You can go to Court, only when you get a date and the Court calls you. There is a certain process for the Court. I think for the middle class it is not that bad – it is not the same for the homeless²⁶⁶.” Pallavi, another lawyer who does pro bono for the urban homeless agreed, “the municipality office, the PDS office, the health service office... are the legal spaces of the poor. It is like the Court is a mythical creature, not a real thing.²⁶⁷” Lawyers' dual functions of serving as a conduit and serving as a constant reminder of the obstacles to access widen the gap between the Court and the public. In what ought to have been a forum for debate and mutually agreeable decision-making, lawyers exercise their sense of legal knowledge by making decisions about the legal process. Pallavi recounts the presence of lawyers and the overt dependence on them, “I remember conversations with senior lawyers asking me to draft the petitions in a certain way since they know how to handle the Court and get the work done. This leaves little or no room for anyone else to speak.”

One eminent lawyer in the Supreme Court of India who has represented numerous cases for the homeless on behalf of NGOs, in response to my question on whether the urban community groups or

²⁶⁶ Personal Interview, dated 08.10.2016.

²⁶⁷ Personal Interview, dated 10.11.2016.

the debate about how to frame petition arguments includes campaigners, said – “No. I do not discuss these things because I have enough understanding of the topic. The petitioners are either NGOs or the slum dwellers who do not have any understanding of the law or legal arguments, and therefore you must write the petition according to your own understanding of the law and their rights.”²⁶⁸ Vijay Raja, a lawyer in the High Court of Bombay, argues that, “even if lawyers like him wanted to, ‘there is no time for that kind of discussion. Petitions are filed when eviction notices are issued or even after the demolitions have taken place or arrests have been made. The sudden nature of these cases makes the legal aspect a reactive process. Yet it is perceived to be impossible to approach the Court at any other time. It would be like putting your hand in a bee hive and asking when are you coming to destroy our homes?’”

Contextualizing the Rights-based Approach

“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 the previous section, I highlighted the perception that lawyers had the expertise of writing legal arguments and pointed out the distance that activists felt while participating in the framing of these arguments. In this section, I assess how this distance shapes arguments made within the Courts on the rights of the homeless by continuing to contrast these arguments with those made outside the Court by urban social movements. I do so in order to argue that the rights understood and argued within the legal petition differs from the understanding of rights within the urban social movements, both in their content as well as in the understanding or the claimant of rights themselves.”

Why should a person who is understood as a threat by the police not be arrested from loitering on the streets when they could be a cause of social disharmony? “Any kind of resistance to arrests and criminalization must grapple with this question as must any articulation of rights to or in the city.”

²⁶⁸ The interview was conducted in Mumbai and the lawyer did not wish to be named in the thesis. I have avoided referring to any of their cases or pseudonyms either to avoid any conflict.

“In a Court of law,” argues Tarique, “one has to make an argument which is logical and legally sensible.” A legally sensible argument in response to the questions above, he says is, “Every citizen has a right to know why he or she is being arrested, these are poor people who have little or no access to housing which is a fundamental right. If they had access to housing or the ability to prove their identity or provide an address of residence or work, then this question itself would not come up.” The legally sensible basis of the right to not be arrested for their appearance for example, according to the senior lawyer, is indigence. “It is legally unsound,” he says, to argue that, “look these people have been staying in the city, in this area for decades, they are workers, they have built the city, so they have a right to it. They do not. Legally, they do not.” He is dismissive of what he calls a confused rights-based argument. “A lot of activists in the country are confused. There is a mental confusion about what is a rights-based argument or what is the right. There is no absolute right to use public spaces or government land for sleeping or doing other daily chores. That right is only there if you are so poor and indigent that you cannot afford any other housing or way of living.”

The lawyer was arguing against claims made by social movements like “National Alliance for People’s Movements (NAPM)²⁶⁹.” 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 the 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.”

²⁶⁹ “The NAPM is an alliance of different community-based organisations and movements across India. It is an umbrella organisation for a larger alliance that brings together different civil society organisations and individuals working on similar goals of reducing discrimination and inequalities in society. In Mumbai, NAPM currently has an alliance of 28 such organisations and many individual activists and lawyers.”

For the Supreme Court lawyer, this argument is not legally sensible. Yet his own 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, he is relying on precedents set by the Supreme Court that previously read the Right to Life to include the right to based needs includes shelter. Not all judges accept this or believe that there is an obligation to meet basic needs as part of fundamental rights,” he admits. His position becomes “an interpretation of a right-based claim that he believes can be made effectively within a Court rather than a clear textual right.” He is making the same mistake he accuses the activists of making, indigence – is not a right but a claim to a right to have rights.

The intervention filed by Koshish's attorneys Vijay Raja and Pallavi for the release of several women detained in Bombay adds another more dimension to a defensible legal position. They categorically “reject the idea of rights having any purchase in the Courts even in a legal sense. I could have taken the entire argument on fundamental rights out of our petition and I do not think it would make any difference. We were so sick of arguments based on the Supreme Court’s reading of fundamental rights.” They add further, “there are so many grand pronouncements that the Court has made about fundamental rights. What do they mean? Nothing.” When composing the petition together, Vijay and Pallavi made the decision to give their justifications as much legal weight as they could. This was their attempt to confine the Court's discretion to textual law as far as feasible.

This was according to Vijay, “not a place to debate what the homeless deserved but only to remind the Courts that no matter what you think of the homeless or people who look ostensibly poor on the streets, you cannot send them to remand homes without due process.” The petition relied on the process of arrest defined within the BPBA 1959 as well as the rules of the law, including the commitments to rehabilitate, provide vocational training and the requirement to make people skilled independent individuals while they are detained in institutions. They argued, “We did not know if the

Court would listen to us or be hostile. We wanted to just say to them that this is the law. You may think of the homeless as eyesores but you cannot just go ahead and order arrests of groups of people without any proof of a crime or relief to them.”

An evaluation of the Homeless Alliance's brochure offers clarification in this regard. In the booklet, an argument for the rights of the poor before the Court is made that is missing from the legal petitions, “the need to challenge the burden of proof on those arrested. In determining whether the individuals arrested are beggars or not, the burden of proof lies on the individuals themselves in Court and not on the police or the Beggars’ Home authorities.” In other words, after the arrest the person needs to bring proof that they were not begging while being put into the police vans.

There is a seeming inconsistency in this idea. If the act of begging or soliciting money or objects in public spaces is a criminal act, then it is for those who arrest such criminals and their activities to issue a warrant and put them in prison. But the lack of a warrant or any consequence of arresting people whether they are beggars allows the officials to file chargesheets and make claims that the arrested person may not even be aware of. On the surface, it appears that there isn't much basis for the arrests, other than a desire to highlight the growing number of people who are purportedly captured in cities indulging in illicit activities. In the pamphlets written by the Homeless Collective, one of the questions raised is, “How can the police even take hundreds of people into custody without a warrant? What are people’s rights and how do we access them?”

“No petition representing the urban homeless in the Court has ever challenged the process of arrests and the multiple exclusions it represents for the people even though this issue remains central to the movements demanding a repeal and amendment to the law. This is a remarkable omission in a subject meant to protect the homeless from being criminalized in the first place. This legal strategy represents an interesting relationship – one that evaluates not just arguments that are legally sensible but also claims that are legally defensible within the Court. This also shows the ambiguous relationship of the government offices with the urban homeless – where we see formal acknowledgment by the

government of its approach to the homeless, which is simultaneously violent, regulatory, and disciplinary (Roy 2009, 173).”

Demanding Rights – Who are the Homeless?

“The imagination and descriptions of the claimants of rights, i.e., the homeless themselves, represent the most fundamental variations between the idea and usage of rights within and outside the Court.” The issue of who may successfully claim rights or who can be accepted as a valid right holder has long been a source of contention for rights-based methods. The petitioners in several instances brought on behalf of the homeless are described in a similar way. It usually looks like the one below, which is an excerpt from a plea to stop the arrests that was submitted to the Bombay High Court. The Petitioners are aggrieved by the impugned order dated 7th May 2018 passed under section 5 of the BPBA 1959.

According to the Petitioners, the learned Magistrate had wrongfully and arbitrarily declared Petitioners number 2 to 30 as beggars and directed to be detained for one year to a certified institution at Chembur, Mumbai. These women and children, who are at a young and sensitive age were illegally picked up from the streets/place of work on 7th May 2018 on the pretext that they are required to make Unique Identification Cards for them. It is contended that the detention order is per se illegal and none of the Petitioners are beggars. They are engaged in different occupations of selling garlands, balloons, domestic help, etc. The Petitioners belong to impoverished and marginalized backgrounds. They have been affected by natural disasters and other calamities; additionally, poverty pushed them to the city looking for better opportunity of employment. Most of them are without shelter and have been staying on the streets. They have been facing unfortunate circumstances but despite that have courage and are striving to lead a better life²⁷⁰.

²⁷⁰ Criminal Writ Petition No. 2397 of 2018. In the High Court of Bombay.

Another petition reads similarly, “Petitioner no. 1 is 58 years old and has been living in the New Sanjay Camp since 1981. He works as a casual laborer in the nearby industrial unit and has four members in the family including his wife and three sons. He does not own any land or house and therefore, evicting him from his hutment will render him and his family homeless as he cannot even afford a rented house or room in a city²⁷¹. The petitioners appear uniformly as poor, marginalized, unfortunate citizens. They are landless laborers who come to the city only because there is no work in the village. Their families are – especially women and children – totally dependent on the male members.”

From this position, they are only able to assert the one set forth by the Supreme Court attorney as being legally sound — “a claim based on poverty that justifies their presence in the city.” When you seek for a waiver of some rules while another petition asks to avoid being jailed or evicted, both petitions appear to portray the poor as victim characters. So, one needs to have the Court's compassion in addition to seeking for a legal foundation for such waiver. Pallavi “remembers discussing an argument that would talk about how resourceful these people are but how little they use to survive. To push it to a legal argument to say that this is the best use of land I think was too farfetched, I think there is a strong sense of the pavement dweller being an eyesore. The judge would look at you and laugh. It is not that farfetched to say that housing is in the public interest...” Pallavi was discerning. “None of the PILs filed on behalf of the homeless makes an argument, in fact, that the poor deserve to use the public land and that the public land is best used for housing the city’s poor. 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.”

In the pamphlets written by the Homeless Collective however, the hapless homeless or pavement dweller is not found. Instead, terms used are, City Makers, hardworking individuals, laborers. “The narrative of migration is described as one of development rather than distress with the homeless as a

²⁷¹ Dev Change and Others v. Union of India CM 6982 of 2007.

key aspect of that narrative.” As Pradip argues, “when someone migrates to the city, he does not have an identity, he makes an identity when he establishes himself, either by becoming a slum dweller or pavement dweller or homeless. He makes the city; he builds the homes of the rich and poor alike. If the Court understood this, they would not give judgements like this.”

“Migration is also implicated as a state strategy rather than simply a movement of distressed rural workers.” “Workers,” argues Pradip, “are brought to the city by contractors or government officials for work. The narrative of why pavement dwellings, for example, are built, differ from legal arguments.” In one of the pamphlets by the Homeless Collective, activists argue that, “while the Court judgements have also blamed BMC for encroachment of their own, they have not recognized that it is these authorities that have denied housing and rights to the poor. The BMC itself admits in the Court that the growth of urban homeless is a result of the government’s failure to provide low-income housing to the poor.” In this narrative, “the urban homeless is a result of the state failure to provide housing. Here, a different claim to right emerges, one that is based not on indigence but on a history of state failure against its own claims for the provision of housing²⁷².”

Re-negotiating Spaces – Concluding remarks

With this chapter, I have attempted to “evaluate the changes in the nature, forms, claims, and methods of urban social movements in Mumbai that seek to stop arrests and alter the process of criminalizing the homeless. I argued in favor of a variety of impacts. First, I made the argument that when the Court is the target of opposition rather than the government, existing divisions among urban social movements over how to choose between various forms of resistance become much more problematic. While activists also struggle with the idea that a court order cannot be contested at all or the idea that it is not a place where the urban homeless can and should voice their demands, the complex divisions of gender, class, and vulnerability continue to play out in the choice of how to resist a court order.”

²⁷² See chapter two for a discussion on the history of planning and housing in Mumbai.

“The right and duty to challenge the government are contrasted with the belief among activists that they do not have a right to challenge the Court, which compromises opposition tactics further.” This feeling is deeply entrenched in a perception of the Court as being far from the homeless community, both physically through access hurdles and symbolically through the Court's standing in society and politics. As the lawyer Pallavi had argued, The Court is like a mythical creature, it is not a real thing.” The gap between political processes inside social movements and the legal process is extremely substantial, and it contributes to this feeling of distance by acting as both interlocutors and symbols of the barriers to access for the poor within the legal system.

Thirdly, the very nature of the claims made by and on behalf of the homeless that are based on their legal rights illustrates this difference. The limitations of arguments that attorneys feel the Court would accept as valid define rights in their legal meaning. “Although they make up the heart of the rights-based claims outside of the Court, arguments made by the homeless in movement spaces, particularly those that challenge the government and question their position, are thus not required to be legally sound.”

Finally, the homeless themselves must be portrayed as legally recognizable and defensible petitioners, in addition to the rights-based claims. This has two important consequences: it makes the impoverished appear weak in order to win the Court's compassion and it excludes those who are unable to defend themselves in court. Overall, the Court's influence on the dynamics of resistance puts the content of rights-based claims at risk as well as “the political identity and history of the homeless and poverty itself.” It also questions the decision-making processes and strategy selection in movement spaces. What are the implications of such a process?

This process of resistance challenges both “right to the city and rights in the city.” The former represents “a claim that pushes the boundaries of legal decency, as seen by the incapacity of attorneys to contest the arrest and detention procedure or to assert that living on the sidewalk constitutes the greatest form of public interest.” The latter draws attention to the differences between negotiating

with the government and the judiciary as well as the constraints that each imposes on the other. Some kinds of involvement as well as the potential and forms of either dialogue or conflict are prohibited in certain places of political activity. These disparities were expressed in narratives of both fear and estrangement from the Court for social movements in Bombay, limiting the options accessible to the activists inside urban social movements.

When dealing with the court, for instance, the politics of negotiation are transformed in both substance and meaning. As I described in this chapter, “claims that can be made to the government are frequently not brought in the same way to the Court. What does this mean for the movements in cities? It implies the significance of an entitlement framework composed of both statutory and textual rights.” As I quoted earlier, “there is no fundamental right to Housing in the Indian Constitution as there is the Right to Education. In a major decision, the National Slum Dwellers Federation, a part of the Alliance, had chosen not to join the failed National Campaign for Housing Rights that aimed to create a constitutionally mandated right to housing in the 1990s.” Mitlin and Patel argue that “they had refused to join the campaign because, for a huge number of slum dwellers, the national campaign did not have an immediate positive impact on their daily lives. The members of the NSDF could see that there were many constitutional rights that were not recognized, so what was the point of adding another? (Mitlin and Patel 2005, 19).”

The justification for establishing a new fundamental right becomes more evident when we see the State as a system in which the court and government are linked rather than just as separate entities. One factor that permitted the Courts to dismiss the rights claims of the homeless and to abdicate their responsibility to hold the State responsible for sheltering all people was the lack of a legally binding right to housing. Due to its lack, the sole ground on which the poor may assert their legal rights is indigence. Due to the government's ongoing non-compliance with its own rules and lack of execution, textual rights may appear insignificant in interactions with it. 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 and governance (Roy 2003, 157).”

Yet within the State, the emergence of the Court challenges this control of the government. The necessity for new forms of struggle, one that can confirm and advocate for rights in forms recognized by the Courts, confronts movements that have long attempted to shift the informality of the State in their favor using their vote and their capacity to organize people. It is also unclear how the interaction they recommend can be built and be productive when it is not with the government but with the judiciary if a politics of continual opposition cannot produce durable benefits. It will be extremely difficult for social movements to adjust to the Court's rise.

It will be essential to participate further with legal expertise and clarity in efforts to work across issues of gender, class, region, language, and unequal vulnerabilities. It can be difficult for movements to convert their rights-based demands, political identities, and knowledge of the processes involved in the creation of cities and urban space into legal petitions. If movements decide to confront rather than negotiate, it means that they must figure out how to challenge the Court's authority and its decisions. In other words, they must learn how to engage the Court in a legal battle on their terms.

“The difference between rights-based claims within and outside the Court are stark markers of the limitations of PILs as a space of justice for the urban homeless. The PIL is a space that sought to amend the judicial processes in order to further access to justice for the marginalized. Yes, as the judgements show, easing of the rules of standing and representation cannot ensure that they all are heard in the Court even if they are present as petitioners. The constraints of a judicial imagination and of the binds of legally sensible arguments and legally defensible petitioners again question the limits of the Court as a space of justice in the city, especially when it comes to the question of production of space through the illegal occupation of public 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 judgement on the ability of the homeless 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 and contributor rights to make claims on the city. They legitimate these rights and participatory practices based on their contribution to the city itself (Holston 2008, 23).” In this chapter, I have argued that the homeless were “unable to present themselves to the court as individuals with the right to possess rights, and instead felt that they had to present themselves as victims whose claim to a right to housing is based on indigence rather than contribution because this was made clear to them as the only legal course of action.” One justification offered by the attorneys with whom I spoke is that the homeless have no right to dwell or occupy land that they do not own or for which they have not paid. They cannot appear as the City Makers who create the city as they are represented in the social movement pamphlets; they can only appear as specific types of residents.

In the Court, as I have argued in the preceding chapters of this dissertation, the urban homeless are reduced to encroachers or criminals with no legal claim to the space they have been living in in the city. The government did recognize their “claims to land in various ways and this recognition has been the space of political engagement between the social movements and the government in Indian cities. It is this negotiation that the resistance in judicial spaces forecloses.” In the context of claiming land and space in cities, I argue that some sort of ownership claim has been crucial in deciding if an upsurge is even possible. In the eyes of the Court, the homeless person's lack of any claim to possession becomes their status. So, from a judicial perspective, the ownership and property laws of the city are read.

The further impact of the Courts rulings is through the media. The information and narratives of the Court becoming widely accessible as archives of the city (Sundaram 2009) “paints an imagination of the homeless that travels into the city just as the politics of the city enters the Court. Like the idea of the helpless, landless, encroacher, pavement dwellers shape the political locations that the homeless

are then able to inhabit outside the Court.” Hence, “court decisions that identify these rights in ways that are limited and restrained by the requirement to be legally rational have an influence on the public discourse on the rights and entitlements of the marginalized, which is, in turn, necessary to create legally defensible entitlements.”

Urban social movements now face a new set of challenges, including the need to test the limits of what is legally permissible, refute accusations of illegality, view law and planning as arenas for negotiation and contestation, defy the Court on its own terms, and question fundamental notions of property, ownership, and public land use. The development of new discourses and articulation languages, as well as the conception of new tactics, are all required. In order to successfully address these difficulties, it is crucial to understand them. This applies to both rights in and to the city.

Conclusion

I started writing this dissertation with a core theoretical concern – “the politics of exclusion and the reproduction of poverty and inequality in the present-day city in India and the negotiations of citizenship” that lie beneath it. I aimed to write a history of the city and read its present from the perspective of those among its margins – the urban homeless and the urban poor in general. The question of exclusion and inequality, I argued, is the most persistent question that the homeless asks of the city and its citizens. I arrived at the urban homeless through their arrests. Mumbai is a city that has a landscape scarred with demolitions, evictions, and arrests of its most vulnerable citizens often without resettlement, rehabilitation, or acknowledgement of their vulnerabilities.

Large scale arrests and demolitions occurred in Mumbai and across cities in India during “the Emergency from 1975-77, when democratic and fundamental rights were suspended.” In present times, however, the same has been happening through democratic processes of governance. They mark, therefore, “a different set of negotiations, legitimations, processes, and levels of resistance.” What stands out as a factor in contemporary times is the Judiciary as an actor involved in the ordering of arrests and evictions of the homeless, “the High Courts and the Supreme Court within the judicial innovation called Public Interest Litigation that had been originally brought in to enable the poor to access justice in the Courts.”

I argued that we must first comprehend the homeless in the construction of space in Bombay in order to understand how the criminalization of the homeless may be viewed within the context of public interest. The homeless are participants in a political conversation in which they negotiate both their right to and presence in the city, making them more than just an eyesore or a collection of disenfranchised people. “It can be understood as the negotiation of citizenship if we see the homeless not just as a legal category but as the performative dimension of membership which define the meanings and practices of belonging in and to society (Holston and Appadurai 1999, 4-5).” The criminalization and detention of the homeless therefore represents the evolution of their political engagement, of attempting to remove the homeless from their fight for “the right to the city.”

The contemporary urban politics redefine governance, citizens, and public order to signify demolitions and arrests as acts of good governance and planning. What these actions represent is the contemporary urbanism in the city, the complexity of the city as a site of citizenship and a space for the reproduction of inequalities. Through the four chapters of this dissertation, I have presented how arrests and detentions of the homeless bring forth the politics of judicial intervention in the governance of the city. This judicial presence is characterized by “new frameworks and practices in urban politics that represent themselves in the city through institutions of governance and officials and urban residents.” This kind of urbanism leads to show us the expansion of the presence of the courts and the law itself within urban politics, “leading to a series of questions and debates within urban politics coming to be seen as judicial questions as they are articulated within the framework of law.”

On account of my concerns on the politics of citizenship, inequality, and exclusion, I looked at the city through one trajectory – at how the criminalization of the poor is made to make legal sense through PILs. Three key frameworks developed in the process – i) the crisis of planning and exclusion of citizens, ii) the criminalization of the homeless; and iii) dynamics of resistance. Through these frameworks, I question the interaction between illegality, planning and the urban homeless by arguing that if the city is showing dysfunctional dynamics of development due to the unplanned growth and expansion, then this dysfunctionality must not only focus on the homeless but also on “the production of illegal spaces by the urban middle and upper middle classes” too. I argue that the “questions of urban politics must not look at the contrast between legal and illegal but focus on the ways in which planned development produces illegalities and frames certain kinds of urban actors as illegal with respect to others” and what the results of such framing is leading towards.

In the second chapter, I discussed how the courts misread illegality when it comes to their perceptions of encroachment and encroacher, viewing the former as the problem inside and for the city and the latter as the ones to blame. The courts have utilized the story of poor planning and development in PILs and demanded an explanation from the government for its actions in the city. I have presented

how the courts have tried to be active in the governance of the city spaces using the development plan as a legal charter to defend an ideal “spatial order.” By intervening in this crisis in the city to create order therefore became the primary goal of public interest as well as the rationality of the judicial governance. Drawing on the works of Upendra Baxi (1988) and Gautam Bhan (2009), I also argued that litigations on the homeless created process of public decision making in which exclusion and impoverishment of some people got justified as right and fair.

The categorization of the urban homeless as the encroacher binds their identity to a spatial illegality, thereby leading to exclusion as well as the deletion of their vulnerabilities, creating another subject for urban politics. Concluding from this, I presented how the Court, as a site of resistance, results in negotiation and confrontation in the spaces of engagement with the Court. The presence of the Court, I argue, puts to test the ways in which urban social movements strategize their processes of decision-making or registering protests and content for claiming rights while simultaneously shaping the political identity of the homeless themselves. In the concluding part of the dissertation, I focused on the “complex relationship of the city as a site of citizenship and the politics of judicial intervention” in the urban through the welfare policies and innovations in urban social movements and their claims to the city.

Welfare and the Urban

In the fourth chapter I presented how the failure of the Right to Housing movement showed that when we see the State not exclusively as the government but an interdependent regime of government and judiciary, there emerges clarity in the what constitutes as rights. “The absence of a legally binding fundamental right to housing enables the Court to reject the rights claims of the homeless to provisions for housing and hold the government accountable for it.” The question that comes up then is – what kind of policies, laws and rights exist in the cities and what can they provide to those seeking to gain additional “right to the city for all” its citizens?

The Pradhan Mantri Awas Yojana (PMAY)²⁷³ is the central government's policy on providing housing and shelter for the urban poor. The policy itself thinks about "urban residents and begins with a clear articulation of the rights of all the citizens to come and live in the city and have shelter space in it. It also acknowledges the State's failure to provide housing for the poor, regulate real estate prices and expresses a right to shelter as a direct response to the illegality of the poor." The PMAY along with the Swachh Bharat Mission²⁷⁴ – provision of water and sanitation for all settlements in the city – challenge the existing policy paradigms. The Swachh Bharat mission states that, "every urban resident should be provided with minimum levels of sanitation, irrespective of their legal status of the land in which they are dwelling, their status of migration or possession of an identity or address proof²⁷⁵."

The provision of such services along with other policy interventions in the city address the impoverishment – for instance, the AMRUT scheme expanded social security schemes for the urban poor as well as supply of basic services like water and transport, the "Swarna Jayanti Shahari Rozgar Yojana (SJSRY)" focuses on "organizing the urban poor with opportunities for skill development and employment, access to credit and is aimed at providing shelter with essential services for the homeless and address livelihood issues of urban street vendors and hawkers."

Taken together, the current set of policy frameworks and interventions – which is largely borrowed from the previous government's policy – takes forward the articulation for the social protection of the homeless. Some are rights with an accountability of the State to fulfil them, some are safety measures, and some are insurance schemes based on contributions, while a few are guidelines and vision statements that may be lost in translation and implementation. What they represent, however, are the evolving sites for confronting the questions of urban citizenship. I argued in the dissertation

²⁷³ The PMAY – 2015-2022, is an extension/replacement of the Rajiv Awas Yojana – 2011-2022 initiated by the UPA government – to provide 2 crore affordable housing for its urban poor by 2022.

²⁷⁴ "The Swachh Bharat Mission is a policy run by the current BJP government, an extension of the National Urban Sanitation Policy (NUSP) 2008 that was formulated during the UPA government. The NUSP was a significant policy in the sense that public service providers were asked to provide basic service to those who were previously seen as encroachers or illegal."

²⁷⁵ The Prime Minister introduced Swachh Bharat 2.0 guidelines in October 2021 with revision of rules for Urban areas. Accessed here - <https://sbmurban.org/storage/app/media/pdf/swachh-bharat-2.pdf>

that arrests mark the criminalization not of the homeless but of poverty itself – reducing the worth of poverty as a basis to claim political rights and citizenship itself. Yet just as detentions and arrests present a closure of “one set of claims by the poor in the city, the policy and schemes of welfare open up the space from which the claims can be made.”

The enabling of provisions of sanitation facilities is one of the many ways the policies could allow the homeless to overcome their spatial illegality and exclusion. If the homeless are beneficiaries of the SJSRY or the PMAY they are not encroachers but workers who are able to “access the institutions of the State – the government and the judiciary – as workers with rights, both textual and statutory. If all urban residents are entitled and have access to services like water, sanitation, education, health and livelihoods, there is a possibility of reconstructing the image and presence of the poor in the city. It also opens a judicial discourse on illegal settlements to struggle with a set of other imperatives and rights.” “These policies enable a broader claim of a right to the city because there are focused on the urban – premised on residence in the city. They are not poverty alleviation schemes based on target groups marked by their relationship to poverty line or have an imagined assumption of the homeless as displaced rural residents. The policies therefore signify a group of rights for the homeless to be protected in the city by the State. The policies also adopt a language of the universal human rights and not distinguish the poor from the elite – making it possible for practices of citizenship that argue against the class-based discrimination between urban citizens. It is also problematic in its intent and the possible impacts on the politics of the marginalized.” The homeless form votebanks for the political machinery in the city and this opens up spaces for them to integrate in the political culture of the city. This can seem like a challenge to what is understood as democratic citizenship by the affluent sections, and can be a temptation for exclusion, motivated by their commitment to democracy itself. Exclusion also stems from democracy’s attempt to force a common mold for all its people with clear definitions of what citizenship entails and what their allegiance should be towards. I therefore argue that the processes of legal, political, and social exclusion stem from an apprehension towards

people's 'way of being and living' and not against the people who are categorized as homeless or migrants or outsiders.

The rigid social structure and prejudice of Indian society impacts the politics and citizenship of homeless and denies acceptance, and subordinates' ideas of citizenship. In the micro-politics of urban spaces, be it the settlements, engagements with municipal politics, the civil society, or the courts, how are these actors able to control the city and determine "inhabitation in the city, of the rich and poor alike?" The poor want to assimilate into the space they have entered and be accepted. But now they want to do it at their own pace, in their own ways and in the process, they alter the city as they assimilate into it, forming a 'political society' (Chatterjee 2004, 27-52).

The criminalization of the homeless marks the challenges of seeking to be included within the judiciary because their identity as the homeless, encroacher, bind them to spatial illegality causing a denial of their rights. To challenge this legal perception, the homeless must present themselves as citizens that are legally recognized and defensible. The policy initiatives could be used to enable these locations for the poor to appear as citizens within the Court. They could also enable the government to change their dynamics with the judiciary and their rulings and transform judicial opinion itself.

New Cohesions and Contestations

The judicial presence has challenged urban social movements in Mumbai. As I have argued in the chapters, the homeless and the activists have the task of confronting the Court as a challenge, and a right to resist the government; the Court being a distant entity with its own language, institutions, and barriers. Still, the criminalization and the judicial involvement defeat the purpose of the law and its plan, and how they must become the focus and site of the politics of resistance in the city. It also raises the questions of how urban movements can create a response to this new form of political action. It can be done if the movements focus on claiming the city.

Social movements in cities must voice their grievances as grievances about and in the city. I have discussed in the chapters how, in contrast to middle class, upper middle class, and elite residents who

identified themselves as citizens of Mumbai in their petitions, legal representatives and lawyers have been defending the homeless by referring to them as citizens of India or urban migrants who have lived in the city for twenty years. Just as the court scaled the decision of public interest to the scale of the city, the movements and the poor must scale their claims to the metropolis. “By claiming urban citizenship instead of national citizenship, with the city as the main political community” as Holston (2008) describes, “the presence of the poor will both within and outside the Court go beyond their reduction as encroacher or encroachment.”

The movements must reject this reduction if the Court has reduced the poor to beggars, homeless people, or those who live on the sidewalk. They need to reframe the poor as citizens who pay taxes, work hard, are customers, and vote for the city they reside in. The linking of policy measure by the central government discussed in the previous chapter will be a useful complement to the framing of such a discourse, “to initiate a new judicial debate on the homeless as well as hold the government responsible for the implementation of its policy. This also means that the movement is constructing new cohesions in the urban.” Social movements in Mumbai have been presented on the lines of gender and caste or rights-based claims – be it as Dalits, Women, Religious Minorities. An intersectional approach, where lived experiences of the people are reflected – Dalit Woman, or Muslim labourers – would be more accurate. Movements would gain from such shared articulation that forms a basis of their claims to the city. Movements must also challenge their exclusion on the grounds of “property, ownership, and use of public land.” Encroachment means in a sense that public land cannot be used by the poor in the city as their shelter. What could be “the new possibilities of valuing land that give equal priority to its use instead of reducing it” to its estimated value in the real estate market? In a city like Mumbai where more pavement dwellings or squatters are on public land, who would decide how public land should be used and to what ends? By taking on these questions, urban social movements can amend the urban politics and force a change in the judicial interpretation of land with respect to a range of its use and relationship to its poorer citizens. These articulations, it must be kept in mind, must be made in a way that makes them legally defensible and sensible too.

If the law imposes obligations on the Court, then legislation must be channeled towards justice by the movements. Movements of the upper middle classes and elites have done this, by using their access to the law-making bodies in the State to their advantage. It will not be as easy for the social movements but it is possible to make policy and institutional reform through the law which are sites that are distant to the lives of the homeless – who are deemed to be living a life distant from the institutional civil society, planning and policy. Movements can remove this distance. Movements can change and situate an argument for inclusion and fairness in the new judicial city in Indian politics with a new set of challenges and conflicts.

This dissertation brings out a moment when the world, and India specifically, is racing towards its urbanisation dream. With the statistics stating that “more than 40% of India’s population will be residing in its cities by 2030, the city is only gaining more space in the political imagination of the country”. For the realization of the just city, the objective is not only to explain criminalization of the poor but also observe what it is doing – to the city as well as the city that will be.

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From: Hoerning, Johanna <johanna.hoerning@tu-berlin.de>
Date: Wed, Feb 5, 2020 at 2:10 PM
Subject: Colloquium WiSe 19/20 and 2020
To: sanjana krishnan <[sanjkri@gmail.com](mailto:sanjkr@gmail.com)>, Weidenhaus, Gunter <gunter.weidenhaus@tu-berlin.de>

Dear Sanjana,

Thank you for your presentation and participation in the Colloquium WiSe 19/20 organized by the Collaborative Research Centre TU Berlin.

Please find the program schedule for our next research colloquium for the upcoming summer semester 2020. You can submit an abstract of another chapter or extension of your work. Please do not hesitate to contact Gunter or myself in case of any queries.

Looking very much forward to you, your projects/ideas and our discussions,

Best

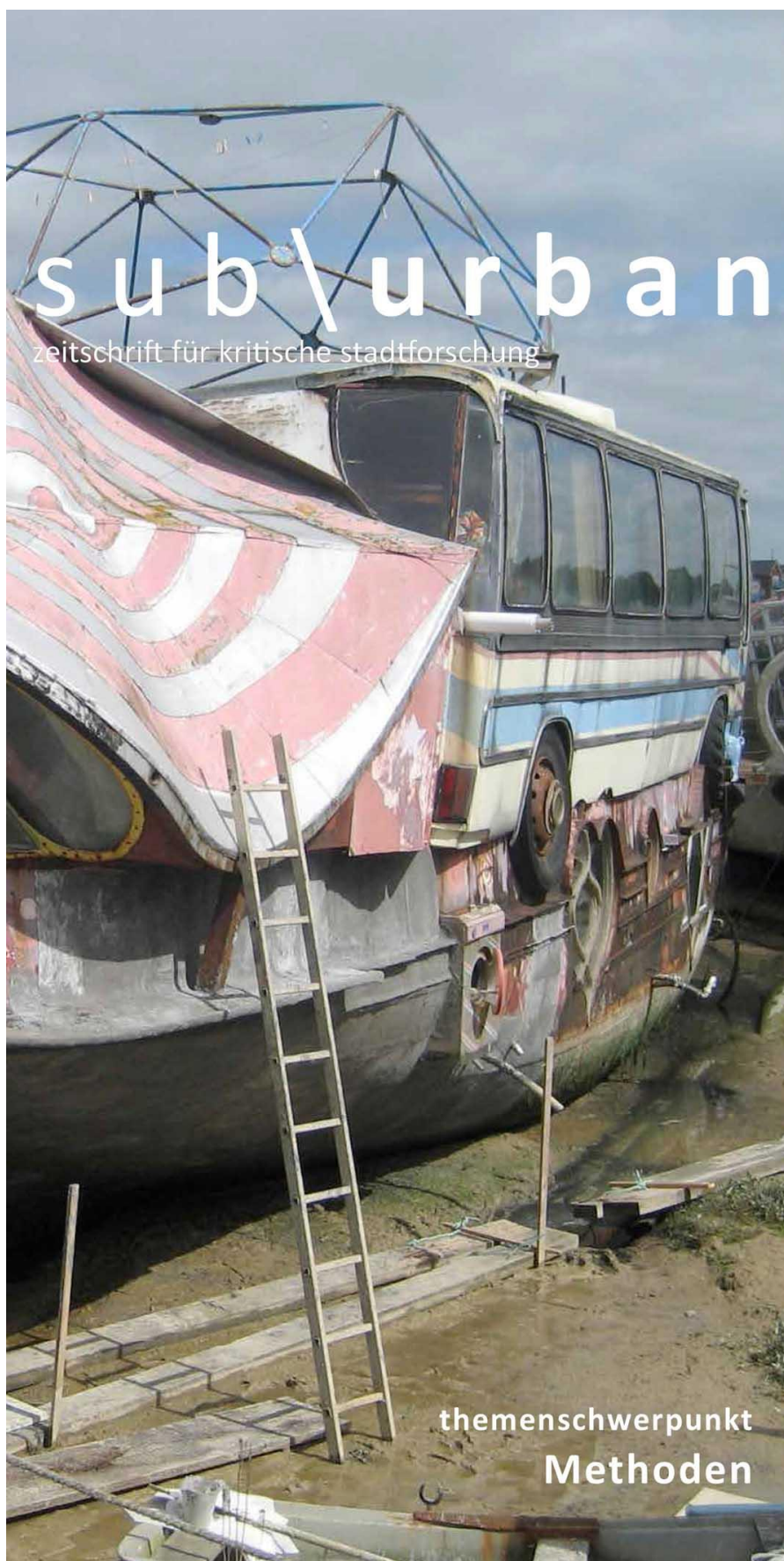
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rezensionen

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Sanjana Krishnan
Rahul Jambhulkar

Herstellung des Kontexts

Indische Städte sind nicht nur soziokulturell divers, sondern auch politisch-ökologisch sehr verschieden. Ähnlichen Problemlagen in allen größeren Metropolen des Landes weisen jedoch auf allgemeine Herausforderungen und Krisen hin, die diese Städte durchmachen. Städtische Armut, überfüllte Wohnverhältnisse, Obdachlosigkeit, unzureichende sanitäre Versorgung, Siedlungen ohne Rechtsstatus, Umweltzerstörung, Abfallbeseitigung und Arbeitslosigkeit – die Liste der Probleme ist lang und jedes Einzelne von ihnen müsste individuell untersucht werden. All diese Probleme wirken zunächst recht einfach in ihrer Art; sie wirklich zu begreifen und Lösungen zu entwickeln, ist jedoch komplex. Die Komplexität liegt in der Verflechtung dieser Probleme. Beim Entwurf von Entwicklungsplänen neigen die Stadtverwaltungen dazu, ihrer Lösung viel Aufmerksamkeit und viele Ressourcen zu widmen. Allerdings verlaufen systematisch organisierte Stadtentwicklungspläne wegen des fehlenden politischen Willens und einer verworrenen Bürokratie oftmals im Sande. Infolgedessen verläuft das Wachstum indischer Städte nach wie vor ‚ungeplant‘, ‚unkontrolliert‘ und ‚unreguliert‘. Migrant_innen in der Stadt gehören überwiegend zu Gruppen niedrigerer Kasten wie der *scheduled castes*, *scheduled tribes* und *other backward castes*. Obwohl sie zahlenmäßig die größte Gruppe in der Stadt ausmachen, bleiben sie auf der Hauptbühne der Stadtpolitik unsichtbar. Der ausgrenzende und ungleiche Charakter der Politik in der Stadt trägt neben den strategischen Nachteilen der städtischen Armen zu ihrer Unsichtbarkeit bei (Vora/Palshikar 2003). Daher ist die Situation der städtischen Armen, inklusive der Migrant_innen, von „begrenzter Inklusion und substanzieller Exklusion“ (ebd., Übersetzungen der Originalzitate durch die *Übersetzerin des Beitrags*) geprägt.

Mit den jährlichen saisonalen Veränderungen vervielfachen sich die bestehenden Probleme in der Stadt. So kommt während des Monsuns nicht nur ganz Mumbai (ehemals Bombay) zum Erliegen, sondern Slumbewohner_innen, Obdachlose und Migrant_innen leben zudem unter ‚unvorstellbaren‘



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RAZZISMO, XENOFOBIA, ESCLUSIONE SOCIALE

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Sanjana Krishnan

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