

## Challenges of Urban Commons to Human Rights in the World Environmental Forum

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### Abstract

The concept of urban commons takes off from an understanding of international environmental law that focuses on implementation by enforcement of the law. Pollution is one of the major problems faced by humanity. The major reason for the increase in the pollution is industrialization, urbanization and increase in human population. The important sources of pollution are industrial waste, domestic wastes, insecticides/pesticides, thermal waste, and radioactive waste.

This paper seeks to look beyond the tools of resource management and governance and a perception of viewing environmental resources as a commodity. The researcher makes an attempt to open a window and expand on a vision that believes in an indivisible and invaluable bond of relationship between human beings and natural resources and the extent of accommodation in the legal order, cutting across different legal systems and by coming up with new suggestions in the era where ecology is a growing concern of international law.

The scope and sweep of the enquiry include how pollution and lack of environmental awareness especially urban commons has contributed towards violation of human rights globally. The enquiry is to explore the international moorings and compulsions that contribute to the development of human rights in international law. It includes an analysis of the extent of commitment, compliance, besides concerns towards the fulfilment of international obligations undertaken by states. Further, the role of non-state actors in steering Global, Regional and National environmental legal regimes also find space in this study. The underpinnings of human right concerns get reflected in the entire paper.

**KEYWORDS-** Environmental Resources, Global Legal Regimes, Human Rights, Industrialization

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### INTRODUCTION

Gone are the times that man lived by the greeneries and satisfied himself with what was available to him. The world at large has developed and it has become a fast moving era where everything is moving at the speed of the light. Migration from the rural areas to urban areas has increased due to the search of jobs and a more luxurious life. While the population has increased, the resources in the urban areas have not changed, creating an additional burden on the environment. The most affected are the common properties in the urban area as they do not fall under the ownership of a particular person.

This paper covers the concepts of urban commons and the allied provisions, various legal frameworks at the National and International Level and thereafter the analysis of each with their respective case studies. I have also made an attempt to provide for

a Legislative measure by suggesting legislation called the **URBAN COMMONS ACT, 2015**, for the better governance of the commons.

Before going into the matter, it is important to look into what the Constitution has to provide on urban commons. Art. 39 (b) provides for the equitable distribution of the resources so as to serve the best interest of the common good along with Art. 48A. There is also a fundamental duty under Art. 51A (g). Taking these into consideration and the nature of the protection that needs to be extended to the urban commons, the power has been transferred to the Municipalities established under Art. 243-Q of the constitution. The list of subjects falling under their purview has been provided under the twelfth Schedule, and they include Urban Planning including town planning,<sup>1</sup> Regulation of Land use and Construction of Buildings,<sup>2</sup> Water Supply for domestic, Public Health and Solid waste management,<sup>3</sup> Urban Forestry, Protection of the Environment and promotion of ecological aspects,<sup>4</sup> slum improvements and upgradation<sup>5</sup>, Urban poverty alleviation,<sup>6</sup> Provision of Urban Amenities and facilities such as parks<sup>7</sup>, gardens, playgrounds.

Urbanization has gained the massive attention and has been the focal point for many of the national policies and action plan and activities. While we have the concept of “Urbanization” as a tool for development, on the other hand it has shown an adverse impact on the environment. The environmental jurisprudence has clearly provided that the development at the cost of environmental degradation is short lived<sup>8</sup>.

The major concern of the present paper is to deal with the issues that the “Urban Commons” face in the present time. The urban common refers to those properties in the urban areas that the urban community has shared interest over.<sup>9</sup> Two types of urban commons are worth foregrounding in this regard: (1) ecological commons (such as air, water bodies, wetlands, landfills, and so on) and (2) civic commons (such as streets and sidewalks, public spaces, public schools, public transit, etc.). Each of these is rapidly diminishing and replaced in many instances by new – privatised and monitored – public spaces, such as malls, plazas, and gated venues.

## URBAN COMMON – TRAGEDIES

As it was pointed by David Harvey in his *Tragedy of Commons*<sup>10</sup>, we can see that the common properties are facing a major depletion and harassment as nobody claims to have an ownership over it. In the course of this chapter, it is intended to provide on the various issues faced by the urban commons.

<sup>1</sup>Entry 1 of the twelfth Schedule of The Constitution of India, 1950

<sup>2</sup>*Ibid* Entry 2

<sup>3</sup>*Ibid* Entry 6

<sup>4</sup>*Ibid* Entry 8

<sup>5</sup>*Ibid* Entry 10

<sup>6</sup>*Ibid* Entry 11

<sup>7</sup>*Ibid* Entry 12

<sup>8</sup>The Development of the concept of sustainable development

<sup>9</sup>VinayGidwani and AmitaBaviskar, “Urban Commons”, Review of Urban Affairs, available at [http://www.epw.in/system/files/pdf/2011\\_46/50/Urban\\_Commons.pdf](http://www.epw.in/system/files/pdf/2011_46/50/Urban_Commons.pdf) (last accessed on 07 August, 2015)

<sup>10</sup>David Harvey “Tragedy of commons”, available at [http://davidharvey.org/media/Harvey\\_on\\_the\\_Commons.pdf](http://davidharvey.org/media/Harvey_on_the_Commons.pdf)

## **Air pollution from the vehicular emission**

The quality of air is a common concern in the urban area and the pollution contributed by the vehicular emissions is very high. Air pollution adversely affects human beings and the environment. This is mainly because of the emission of different toxic chemicals into the atmosphere. Due to the increase in population and traffic, the environment has degraded and it has developed to cause various issues including the climate change. In order to curb these issues, there are legal measures to look into the matter. At **the Vienna Convention for Protection of the Ozone layer, 1985**, the community discussed on the difficulties that the ozone depletion can have on mankind- these include premature blindness to humans, threat to marine life, and removal of carbon dioxide. In the landmark decision by the Indian Supreme Court and those decisions following it,<sup>11</sup> the court opined on the harmful effects these vehicles are having on the public in Delhi. The population is facing difficulties due to the change of the environmental hazards that is being caused. It has been estimated that chronic exposure to such toxic air contaminant will lead to 300 additional cases of lung cancer per million persons. There can be improvement by having stringent emission norms along with the fuel quality specification provided; proper inspection and maintenance must be adopted as that is able to control 30-40% of pollution loads generated by vehicles.

In the course of the paper, the vehicular pollution caused and the issues faced on the public roads are noted. There are other issues related such as spitting on the road, road side sanitation and improper waste disposal. This shows how a private action or property can be matters of common concern. It is here that the public awareness and education plays a very important role.

## **Waste Management**

In the urban sector, the major issue faced by the community is the improper disposal of the waste. Waste management becomes a matter of urban commons in relation to how this waste is disposed. Even when the private wastes are improperly disposed, it affects the adjacent house. To start off, a striking incident from Japan shall be cited<sup>12</sup>, where the authors of the Garbage Management in Japan pointed out how the waste was managed as compared to the outside world. It was provided that the high tech collection mechanism was used to ensure that the waste was properly segregated so as to prevent toxic pollutants. This was to ensure that these toxic materials do not go into the stand and thereby pollute the soil and the under-ground water. The Kyoto residents even have the provision to check on the waste disposal through a 24 hours digital scoreboard.

The wastes in the urban areas consist of Industrial Waste, Solid waste, Domestic wastes etc. It has caused various imbalances in the environment due to the pollution caused. The need of the hour must be to reduce the waste generated and to transform the increasing amount into resources for use and re-use. The waste generation has

<sup>11</sup> *M.C.Mehtav. Union of India*, (1999) 6 SCC 9, *M.C. Mehta v. Union Of India*, (2002) 4 SCC 356

<sup>12</sup> CAG Report on waste management , “[http://cag.gov.in/html/reports/civil/2008\\_PA14\\_SD\\_civil/chap\\_7.pdf](http://cag.gov.in/html/reports/civil/2008_PA14_SD_civil/chap_7.pdf)”, (last accessed on 08 August , 2015)

been considered as a matter of serious consideration in the international regime as well. In matter relating to the municipal solid waste, the case of *Dr. B.L. Wadehra v. Union of India*<sup>13</sup> is important, where the petitioner sought direction to the municipal corporation of Delhi and the New Delhi Municipal Council to perform their statutory duties in particular to the collection, removal, and disposal of garbage and other wastes.

### Hospitals

Common public spaces in urban areas also include hospitals. The researcher will limit the discussion to State Owned hospitals. Entry 6, List II of the seventh schedule in the Constitution deals with public health and sanitation; hospitals and dispensaries. The State is under a duty to provide health services to its citizens. A lot of waste (both bio degradable and non-bio degradable) is generated from hospitals which causes environmental pollution. If not treated properly, it is harmful for plant, animal and human life.

As per the notification by Ministry of Environment and Forests [MOEF] Biomedical Wastes (Management & Handling) Rules, 1998<sup>14</sup> was enacted. Under these rules, it is the duty of the occupier to ensure that the waste is handled properly by setting up requisite biomedical waste treatment facilities like incinerators, autoclave and microwave systems. Moreover such hospitals have to submit periodic reports to the prescribed authority by 31 January every year covering categories and quantities of bio-medical wastes handled. It places an obligation on such hospitals to maintain records and report any accident to the prescribed authority. Before disposing the waste, it has to be demarcated into different coloured containers. The general garbage stored is in green coloured containers and the hazardous waste is stored in red containers. It is the duty of the municipal bodies to collect such wastes from hospitals and dispose of the same via deep burial into the land. However, this burial is not a good method of disposal because it increases the land and soil pollution therefore has an adverse impact on flora.

### UN BIO-MEDICAL WASTE DISPOSAL PROJECT (PUNJAB)<sup>15</sup>

Twenty-eight Punjab hospitals have been selected for an international project aimed at effective management of bio-medical waste in collaboration with the UNDP and the World Bank. The foundation of this project was laid first in 2006 during the Stockholm Conference under the sub-topic of "Reduction of persistent organic pollutants". It seeks participation from various state pollution control boards and community driven initiatives. After being successful in Punjab, this project has been implemented in other states such as Gujarat, Karnataka, Maharashtra and Orissa.

<sup>13</sup> (1996) 2 SCC 594

<sup>14</sup> Available at <http://envfor.nic.in/legis/hsm/biomed.html>, (Last visited on September 3<sup>rd</sup> 2015).

<sup>15</sup> 28 Punjab hospitals selected for UN bio-medical waste disposal project, available at <http://punenvis.nic.in/index4.aspx?ssslid=3947&subsubsublinkid=2204&langid=1&mid=4>, (Last visited on September 3<sup>rd</sup> 2015).

**Impact on Environment-** The bio-medical waste is hazardous and contagious if not disposed properly as the infection can spread through water, air and land. Moreover, it contaminates the nearby surroundings and causes land pollution.

#### *CRITICISM-*

Shouldering responsibility is a problem. It remains undecided who is responsible for ensuring that bio-medical waste is disposed of effectively- whether it is the hospitals/clinics generating the waste, whether it is the municipal bodies collecting it? Because the functions are not earmarked, it is difficult to place responsibility in case of mismanagement.

### **URBAN STREET TREES**

Urban street trees help in combating environmental degradation and nullify the harmful impact of development on environment. In addition, they increase the aesthetic sense of an urban area and combat climate change and air pollution. These trees are carefully positioned to allow adequate sight triangles at intersections and driveways, to not block street luminaries.<sup>16</sup> Street trees of various varieties are used in all climates as they help in maintaining the ecological balance. Currently, in India, there are no laws governing urban trees or how to manage them yet they are an important part of planning roads/ intersections which gives the vehicle users a sense of direction.

#### **Case study- Chandigarh<sup>17</sup>**

Known as the best planned city of India Chandigarh has cluster of trees on the outskirts and in the main city. Street trees have been planted all along roadsides, roundabouts, parks, and gardens and within the premises of institutions and religious places. At present, 66 types of trees planted along road sides have been listed along with their common and English names, taxonomic family, flowering time, and uses. There are boundary demarcations for tree plantations with 100 meters radius; something that not many cities have in India.

The Chinese government has come up with an innovative manner of ensuring protection for street trees and maintaining their ecological balance. The State government gives a monetary award for conserving and planting common trees outside houses and in the neighbourhood. This particularly has been successful.<sup>18</sup>

### **Management**

Street trees are managed by the municipal authorities who undertake the function of planting of trees on the main highways, important roads, mixed roads, municipal

<sup>16</sup> Urban Street Trees, available at [http://www.michigan.gov/documents/dnr/22\\_benefits\\_208084\\_7.pdf](http://www.michigan.gov/documents/dnr/22_benefits_208084_7.pdf), (Last visited on September 2<sup>nd</sup>2015).

<sup>17</sup> Current efforts to manage urban trees and forests, available at <http://www.fao.org/docrep/003/x1577e/X1577E07.htm>, (Last visited on September 5<sup>th</sup>2015).

<sup>18</sup> George V. Profous, TREES AND URBAN FORESTRY IN BEIJING CHINA, Journal of Arboriculture 18(3): May 1992, available at <http://joa.isa-arbor.com/request.asp?JournalID=1&ArticleID=2501&Type=2>, (Last visited on September 2<sup>nd</sup>2015)

roads, city parks, along city watercourses and reserves etc. However, this is a shared responsibility. The home garden tree planting is the responsibility of homeowners. Alternatively, the management can be given to local communities who best know their surroundings, the quality of soil etc. as is being practices in Thailand and the Philippines.<sup>19</sup>

## Challenges

Street trees are urban commons and their preservation is a duty of everyone but the same is subjected to a number of challenges:

- Limited open spaces and ever expanding population.
- Problem of narrow street corridors.
- In developing countries like India, the environment is polluted beyond a reasonable limit for street trees to sustain.
- Soil conditions: very thin top soil, hard pan, saline soils, and improper soil mix.
- Lack of technical expertise, knowhow and skill for plantation and maintenance (arborist, landscape horticulturists).
- Lack of budgetary funds because not enough importance is given to governance of street trees.
- Lack of people's participation.

## Urban poor

**Peri-urban Areas** –Peri Urban Areas are those areas which are in the outskirts. All the master city plans, town planning conveniently excludes them as they are not the central hub of activities. The entire city garbage is dumped in peri-urban areas. Although it is not necessary that these areas host slums but inevitably the witness the largest slum population of urban India.

**Slums-** as per the National Census 2011, about **17.4%** of the Indian population live in slums. According to the **138<sup>th</sup> report of law commission of India**, a slum is a court, alley or street of dirty crowded houses with old and dilapidated structures which are unfit for human habitation. There are possibly three reasons why slums exist in the first place i.e. migration from rural areas to urban areas, extreme poverty and population explosion. The slum dwellers face a number of challenges. The houses are made of mud, stones and plaster, there are no pukka houses and the houses are congested and cramped. Even the pavement dwellers rely on public infrastructure for housing. Other issues like lack of proper waste disposal, no proper drainage system, lack of public sanitation and hygiene and lack of drinking water are commonplace. Apart from lack of civic amenities and apathy of the state of affairs, slum dwellers are constantly ill-treated by the Government who considers them a nuisance to the society.

The Supreme Court, in *Sodan Singh & Others v. New Delhi Municipal Council*<sup>20</sup> upheld that “if properly regulated, according to the exigency of the circumstances,

<sup>19</sup> Urban Forestry and Urban Greening, Volume 7, Issue 3, 2008, page 219–229, available at <http://www.sciencedirect.com/science/article/pii/S1618866708000204>, (Last visited on September 5<sup>th</sup>2015).

<sup>20</sup>1989 AIR 1988.

the small traders on the sidewalks can considerably add to the comfort and convenience of the general public, by making available ordinary articles of everyday use for a comparatively lesser price. The right to carry on trade or business mentioned in Article 19 (1) g of the Constitution, on street pavements, if properly regulated, cannot be denied". Building on these lines, the policy aims to safeguards certain rights of street vendors and hawkers. The policy is meant to foster a congenial environment for the urban street vendors to carry out their activities

### **Draft Model Property Rights to Slum Dwellers Act, 2011<sup>21</sup>**

Under this Act, every landless person living in a slum area in any city or urban area as on 4th June, 2009 shall be entitled to a dwelling space at an affordable cost. This Act aims at constituting a *Grievance Redressal Committee* for the purposes of resolving disputes in relation to matters about identification of slum dwellers and constructions of dwellings for them. A City / Urban Area Slum Redevelopment Committee and State Slum Redevelopment Authority shall be established to ensure proper planning of development projects. The Act stresses upon community participation in decision making. Under this Act, the State Government has the power to make rules on matters specified in the Act and will amend the land acquisition Act.

In *Olga Tellis v. Bombay Municipal Corporation*<sup>22</sup> the Chief Minister of Bombay (as he was then) announced all pavement dwellers will be evicted forcibly and dwellings will be demolished. A writ petition was filed against this order by residents of Kamraj Nagar (a slum). The issue at hand was whether the State could evict slum and pavement dwellers without providing them with alternative accommodation? The Constitutional bench of the Supreme Court held that no person had the right to encroach on footpaths, pavements or any other place meant for "public purpose". It also held that slums existing for a long time will not be removed unless the land is needed for "public purpose" and alternate accommodation will be provided.

**Case Studies:** Mumbai is home to estimated 6.5 million people and nearly 55% of Mumbai's population lives in Slum areas.<sup>23</sup> Although Mumbai's slum area Dharavi is Asia's largest slum but it is economically very feasible and is a major contributor towards the economy of the State. The slum dwellers are involved in skilled and unskilled labour ranging from working in houses to manufacturing lights, incense sticks, fire crackers etc. Moreover Dharavi has a mix of both permanent and make shift dwellings and is organized into home owners associations and trade unions with democratically elected heads. This puts the slum dwellers in a better bargaining position for their rights with the government. In 1980s, the Prime Minister's Grant Project (PMGP) was implemented for in-situ development of the slum

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<sup>21</sup>Available at <http://indiancities.berkeley.edu/2012/docs/Mathur-draftmodelprtrightslumdwelers.pdf>, (Last visited on September 3<sup>rd</sup>2015).

<sup>22</sup>AIR1986 SC 180

<sup>23</sup> Slum Population in India, available at <http://www.indiaonlinepages.com/population/slum-population-in-india.html>, (Last visited on September 7<sup>th</sup>2015).

dwellers. Under this World Bank funded project, the slum households had to be provided with 18 sq. m. (carpet area) walk-up tenements and their families were to be shifted to transit accommodation during the construction period on a rental basis. Households were required to pay for the cost of tenements. It could not be successful mainly due to the hostilities by the excluded slum dwellers, delays in construction, and escalations in the cost of tenements, shortage of transit camps and in some cases slumlords got into the management and created hurdles for development.<sup>24</sup> Mumbai has a plethora of legislations to regulate the slums and to investigate into illegal encroachments for example- Bombay Municipal Corporation Act, 1954, the Slum Clearance and Improvement Act, 1958 etc.

## Reforms

Looking into the issues and challenges of urban commons, the researcher has tried to come up with certain reforms in the existing institutional framework. Some of them are-

- The deficiencies in urban poverty alleviation programmes should be addressed and their mission shall be made more realistic. Moreover, such policies shall be open to public debate prior to implementation.
- Majority of town planning activities and city plans conveniently exclude the urban poor. It is necessary to include them for holistic planning.
- Cooperation between representatives from the slums and the local governing bodies.
- Eviction is not a solution. In case the government does so, there has to be proper rehabilitation of slum dwellers thereby de-criminalizing the slum dwellers, pavement dwellers and street vendors.
- Housing options shall be expanded to include dormitories, hostels etc. which can house more than one family. Thus making housing for all a reality in urban areas.

## Various models of urban governance

- **Public space zoning model** (Robert Ellickson)- This model suggests dividing the entire city into three different zones namely Green, Red and Yellow to govern urban commons along with the law applicable. The aim is to bring every area at a universal level where each person has equal opportunity to access urban commons and live in a healthy environment. This can be achieved by applying different laws and regulations. (*Equality among equals*).

- Green zones would promise relative safety and a high level of strictness in regulating urban commons to ensure better ecological balance. They would be tailored to accommodate the “unusually sensitive population” such as school children, frail elderly, parents with toddlers, and the like.

- Red zones would be the most polluted areas which require urgent attention and where people have no access to urban commons and where environment protection is not a priority. Such places include slums and industrial areas.

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<sup>24</sup> Mumbai to Shanghai without Slums, Slum Policies, available at <http://www.altlawforum.org/node/195>, (last visited on September 3<sup>rd</sup>, 2015).

- Yellow zones would serve as a “lively mixing bowl” where most people may have access to urban commons with a few exceptions. Also the pollution levels will not be as high as in the red zones.
- **State centric approach** - The State is the key player and the cities depend on the state for its management and governance. This model is commonly used in Western Europe and is common in former industrial cities in regions such as the Lille region in France, the Ruhr Valley in Germany, the Bergslagen region in Sweden, the Midlands and Merseyside regions in England, and the Clydeside region in Scotland. The main participants are local government officials and state (national) officials and bureaucrats. The objective of this model is to sustain the local economy through state funds. However, the major challenges are that it cannot be sustained in the long run and will lead to overuse, mis-utilisation of resources by people as explained by Garrett Hardin in Tragedy of Commons.
- **Managerial model**<sup>25</sup> - local government is seen as a public organization resolving collective needs and interests through service production and delivery. The goal is to create a public-choice-style, market like exchange between the producers and consumers of urban services in which consumer choice, rather than preferences among elected officials, decides what services they will be offered and by whom. A lot depends on the roles played by local politicians in a country. It hires management and administrative professionals for urban governance. In sum, managerial governance accords only a minimal role to elected officials. The emphasis is on output performance according to private management standards. Managerial governance blurs the public-private distinction. The participants are managers of organizations producing and delivering public services and customers to whom these services are delivered. Their objective is to downplay the public-private distinction and restoring confidence in public sector. They enter into legal contracts with for-profit organizations for providing selected public services, new strategies of recruitment to managerial positions in the public sector, increasing discretion to these positions, evaluating the internal markets and other forms of competition and redefining the role for elected officials aiming at minimum interference from them.
- **German Model**<sup>26</sup> - In the German case, the mayor has a leadership position, which can be influenced by three variables: the mayor’s personality, the political culture and the institutional framework. The mayor is elected directly by citizens (open lists), providing the post holder with greater legitimacy and flexibility in policy decision making. Furthermore, in southern Germany the mayor tends to be independent from the parties and is the sole authority in formulating urban policies.

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<sup>25</sup>Jon Pierre, *Models of Urban Governance: The Institutional Dimension of Urban Politics*, URBAN AFFAIRS REVIEW, 1999, 372, 379 available at <http://www.euro.centre.org/rescalingDocuments/files/ESP/UrbanGovernance.pdf>, (Last visited on August 22, 2015)

<sup>26</sup>Moneyba González Medina, *Urban Governance and Management in the European Union: Case Studies Of Santiago DeCompostela (Spain) And Konstanz (Germany)*, 8, available at [http://www.cityfutures2009.com/PDF/37\\_Gonzalez\\_Medina\\_Moneyba.pdf](http://www.cityfutures2009.com/PDF/37_Gonzalez_Medina_Moneyba.pdf) (Last visited on August 24, 2015).

- **Management by neighbourhood community-** this model recognizes the self-determination of the community by higher-level authorities (Elinor Ostrom Principle 7) as they have the first-hand knowledge of their environment and surroundings. This model extends the principle of NOT IN MY BACKYARD [NIMBY] to NOT IN MY NEIGHBOURHOOD [NIMBH]. The policies and initiatives undertaken by them directly affect them so they shoulder the responsibilities better. The major actors are the people living in the community. The major drawbacks of this model are lack of technical know-how and sophisticated machinery and no binding authority in case of mismanagement.
- **Corporations Model**<sup>27</sup>– this model is typical of the small, industrial, advanced democracies of Western Europe. It lays emphasis on safeguarding and promoting the interests of the organizations’ members. There is also a strong commitment to participatory democracy in a broader sense. The local government is portrayed as a political and democratic system for the inclusion of social groups and organized interests in the urban political process. Compromises that are acceptable to all major represented interests are attained by distributive compensatory policies. This is a two-tiered model of participation in which mass participation is at the intra-organizational level and only the top organizational leadership is involved in the political process. There is delegated authority. The main objective of corporatist governance is distributive, ensuring that the interests of the organizations’ membership shape urban services and policies. One of the major challenges it faces is during extensive cutbacks in local government expenditures, the incentives for organized interests to participate have decreased dramatically.
- **Independent regulatory model-** an independent regulatory body managing urban commons will be effective in avoiding blame shifting at the time of shouldering responsibility [*whether the state government, central government, municipal corporation*]. Moreover, since powers are vested in one authority, it will avoid overlapping and increase credibility. Such a governing body is given significant regulatory powers and has complete independence in the decision making process as regards urban commons in a city. Such a body derives its powers from the Constitution of India. It is proposed that each city can have an independent regulatory body best serving the common good of that city as every city has unique problems and “one size cannot fit all”. The regulatory body shall appoint experts from various fields including members from CSOs. However, this model suffers from certain drawbacks. The decision of the regulatory body is not “independent” rather it is often influenced by the government and politicians. Secondly, absolute autonomy breeds corruption because the powers in such a model are unchecked and unregulated. Lastly, it suffers from lack of democratic legitimacy as the members are appointed by a pre-planned committee.
- **Thailand Model**<sup>28</sup>- Thai government in 1990s created an independent public agency called the Community Organizations Development Institute (CODI). CODI has a

<sup>27</sup> Supra note 1.

<sup>28</sup> Scott Burris, Trevor Hancock, Vivian Lin, and Andre Herzog, *Emerging Strategies for Healthy Urban Governance*, JOURNAL OF URBAN HEALTH: BULLETIN OF THE NEW YORK ACADEMY OF MEDICINE, Vol. 84, No. 1, page 4.

partnership structure, with a board of government and civil society representatives, but works primarily through organizations and targets neighbourhood communities that plan and participate in the local governance. As of the end of 2004, upgrading programs were proceeding on this model in 175 communities involving more than 14,000 households.

- **Public private partnership model-** in this model, the government and the private party enter into a legal contract which is partly funded by both for the governance of urban commons. Under this model, the private party assumes a public function and undertakes the risks involved for a payment by the Government but the overall control and management vests with the government. The powers, functions, duties and responsibilities are well defined in the contract. This model has been the most successful as it strikes the right balance between the efficiency of a private sector and welfare attitude of the public sector.
- **The NGO model-** This model recommends that governance of urban commons lies in the hands of Non-governmental organizations driven by welfare motive and public interest. The International NGOs [INGOs] place the agenda in ECOSOC wherein the problem of urban commons can get international recognition thereby building international pressure on the State to take adequate measures. The NGOs also hold conferences, meetings, assemblies and generate international debates on the issues at hand and make recommendations to the governments which can be used to effectively govern urban commons. The NGO model enters into strategic partnerships with United Nations Development Programme [UNDP]. The NGOs are capable of raising funds for managing urban commons and initiating projects with United Nations Environment Programme.

The NGOs at the National level generate public awareness and education through workshops, quiz competitions, fund raising for promoting sustainable development. They undertake initiatives to collect waste from door-to-door and dispose it effectively. They assist the State government and pollution control boards to reduce air pollution in urban cities and record the human responses to the environment. NGOs like Green peace, Earth care have been successful in managing common natural resources and preserving them.

- **UNDP Model for pro-poor urban governance<sup>29</sup>** - A key concern for UNDP is to introduce and apply a pro-poor governance perspective to policies with the objective of increasing pro-poor policy outcomes and empowering local groups and citizens, especially poor citizens in policy making processes. The framework added the “value dimension” for assessing policies. This meant formulating policies based on principles of gender equality, equitable treatment of all citizens and non-discrimination. UNDP advocates Pro-poor democratic governance wherein people’s human rights and fundamental freedoms are respected and they have a say in decisions that affect

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<sup>29</sup>UNDP PRO-POOR GOVERNANCE AND THE POLICY PROCESS A FRAMEWORK, *available at* [http://www.sasanet.org/documents/Resources/Pro\\_Poor%20Governance\\_&\\_the%20Policy%20Process.pdf](http://www.sasanet.org/documents/Resources/Pro_Poor%20Governance_&_the%20Policy%20Process.pdf), (Last visited on August 26, 2015).

their lives. People can hold decision-makers accountable and policies aim at eradicating poverty.

- Pro-poor policy builds on mechanisms in which the poor themselves can directly influence the setting of policy priorities.
- Pro-poor policies aim to assist the poor to make the best use of available assets by improving the productivity and economic opportunities offered to the rural poor.
- Provide job opportunities for urban poor and targets those sectors
- Pro-poor policies aim to maintain competitive prices for the products that the poor produce and the basic goods they purchase.
- Participation by women and children for comprehensive policies especially in the health and education sector.

## **Indian Urban Commons (Management and Governance) Act, 2015**

### **Chapter I**

#### 1. Short Title, Extent and Commencement

(1) This Act may be called the Indian Urban Commons (Management and Governance) Act, 2015.

(2) It extends to the whole of India

(3) It shall come into force on such dates as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different areas<sup>30</sup>

#### 2. Definition

(a) “*Urban commons*” refer to shared resources in an urban area as prescribed by the government in an official gazette.

(b) “*Urban areas*” refer to all such areas which come under the municipal corporations and are demarcated for development.

(c) “*Pollutant*” means anything that adversely impacts the environment, subject to licensed pollution for developmental purposes.

### **Chapter II**

#### 3. Registration

Each commons registration authority shall continue to keep a written record of all the common land and land belonging to private persons. In addition to this, a record has to be maintained of the land being used for development purposes.

#### 4. Management

The act suggests creation of a “commons corporation” at the city level.

#### 5. Appointment

It shall be a body constituted under the Act consisting of 5 members, a chairperson and a deputy chairperson. The Chairperson shall be a person qualified in law with minimum work experience of 5 years. There shall be equal representation from the field of science, economics, environment, administrators, social scientists, engineers and private builders. The members shall not hold any other office and new members shall be elected every 5 years.

Every member after confirmation of appointment shall undergo compulsory training in human rights for a period of one year.

<sup>30</sup> It came into force in the whole of India on 5<sup>th</sup> September, 2015 vide Notification No GSR 1156(E) dated 26-08-2015 published in the gazette of India No 890 dated 26-08-2015

### **Chapter III**

#### **6. Powers of the Commons Corporation**

It has the powers of a civil court and the appeal shall lie to the High Court. Expert commons investigation team shall be constituted permanently to look into urban common governance. Every planning project needs the sanction of the commons corporation and is vested with the powers to take action against illegal encroachments. They have the power to enter and inspect any place during the working hours.

#### **7. Functions of the Commons Corporation**

- (a) The corporation shall take cognizance of NGO and CSO reports and public opinion.
- (b) Maintain an online database for the number of people having accessibility to urban commons area-wise.
- (c) A grievance cell shall be constituted and the copy of original complaints shall be made available to the public (Online, official gazette).
- (d) The Commons Corporation shall submit periodic reports to the high courts.
- (e) Close coordination between Municipal Corporation and Commons Corporation. (Note: the functions are not overlapping).
- (f) Resolution of disputes is the utmost priority of the Commons Corporation. A case shall not exceed a period of 6 months.

### **Chapter IV**

#### **8. Miscellaneous**

- (a) Any public spirited person can examine/inspect documents at a reasonable time under the Right to information Act, 2005.
- (b) All the plans, projects concerning urban commons shall be subjected to scrutiny of the public starting from the grass-root level.
- (c) The jurisdiction of one Commons Corporation can extend to other cities in case there is a failure of local state machinery.
- (d) The Power to amend lies with the Central government.
- (e) All actions shall be taken in good faith.

### **Chapter V**

#### **9. Penalty for Contravention of the Provisions of the Act and the Rules, Orders and Directions**

A fine ranging from Rs. 50,000 to 10, 00,000 and imprisonment ranging from 3 months to 5 years shall be imposed.

### **SUGGESTIVE MEASURES- THE ROAD AHEAD**

- Strengthening institutions for better governance through basic principles of accountability, transparency and honesty.
- Minimizing legal barriers on funding for urban governance.
- Increased democratic participation by various stakeholders like citizens, communities, NGOs etc.
- Building connections among various governance corporations in comparison to other urban settings allows the weaker institutions to increase their resources for advocacy, upstream governance. Networks like the Asian Coalition for Housing Rights and Slum/ShackDwellers International (SDI) support each other from the grassroots to international level.

- Establishing a forum for poor, weaker, socially marginalized sectors and women to their opinions and consider the same before formulating policies.
- Implementing urban planning and management policies which would prevent the development of slums.
- Encouraging media to spread awareness to the urban public at large.
- In order to balance development and environment, vertical gardens can be successfully established in every public buildings, houses and offices.
- Recently, The Karnataka Municipal Corporations (Amendment) Bill, 2013 recommended spot fines for littering public places ranging from Rs. 100-5000. This will ensure better governance and cleanliness of urban commons.

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