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# Analysis of new legal discourse behind Delhi's slum demolitions

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**I. Introduction**

Between 1998 and the present, more than one million slum dwellers in Delhi have been displaced, a period during which the pace of slum demolition has increased starkly. The combined number of slum, or jhuggi jhompri (JJ), clusters demolished by the Municipal Corporation of Delhi (MCD) and Delhi Development Authority (DDA) over the five years leading up to 2000 (1995-1999) rose more than tenfold over the next five years (2000-2004) (Ghertner 2005). This increase is the direct outcome of the judiciary's expanded role in demanding slum clearance. Whereas the decision to raze a slum was previously the almost exclusive domain of Delhi's various land-owning agencies, in particular the DDA, these wings of government now have little say in determining the legal and political status of such settlements. Instead, the primary avenue by which slums are demolished today begins when an association of property owners in a locality, called a Resident Welfare Association (RWA), files a writ petition requesting the removal of a neighbouring slum, proceeds through the court's granting of the RWA's request, and ends when the land-owning agency abides by the court's direction.

Whereas recent analyses of the courts' slum-related decisions have attributed the current round of slum demolition to a new anti-poor judicial orientation (see Bhushan 2006; Ramanathan 2006; Roy 2006), in this paper I seek to identify the legal and technical mechanisms by which court-issued slum demolitions are actualized. That is, rather than attributing causality to macro "class interest"—an anti-poor or neoliberal bias within the judiciary—I will discern the evidentiary requirements the courts deem necessary for demonstrating a slum's illegality. I do so by engaging in a discourse analysis of both (i) the orders and judgments of the Delhi High Court and Supreme Court of India related to slum demolition over the past approximately 25 years, as well as the (ii) original civil writ petitions filed in five different cases that directly led to the demolition of a slum in Delhi. By highlighting key words and phrases that arise within the proceedings of slum-related cases, I set out to show that the basic statement that "slums are illegal" is a very recent juridical discourse, despite its widespread circulation in India today. I further argue that proving this statement in the courts rests on a less rigorous evidentiary procedure than other types of truth claims: to prove a slum's illegality, one must demonstrate that it *appears* to be a nuisance. I find that the rise of court

orders to demolish slums is occurring not simply because the judiciary is suddenly "anti-poor," but rather because of a reinterpretation of nuisance law, the main component of environmental law in India (Jain 2005). Nuisance has thus become the key legal term driving slum demolitions and has been incredibly influential in resculpting both Delhi's residential geography and how the city's future is imagined.

While the documents I examine relate primarily to Delhi, rulings in the Supreme Court and High Courts establish precedent across the land, thus determining how cases pertaining to slums are to be judged in all cities. Therefore, in addition to making a set of specific claims about the discursive reconstitution of legality and citizenship in Delhi, I suggest a set of more far-reaching implications for Indian urbanism. In particular, I show how the category "nuisance" is fundamentally aesthetic, tied to dominant perceptions of acceptable conduct and visual appearance. The ability to criminalize, punish, and expel populations (of the poor, informal, migrant, etc.) that do not conform to the aesthetic norms of Indian cities—i.e., those that look like nuisances—hence presents a new, or at least newly significant, arena for urban struggle in the post-colonial Indian city. This is especially the case given the observation that India's elite have cultivated a "world-class" aesthetic that they are using to try to create "bourgeois cities," largely through the language of "environmental improvement" and "beautification" (Baviskar 2005; Chatterjee 2004, 143-4; Fernandes 2006, xxii). Building on these studies, I show how the reinterpretation of nuisance law has reconstituted the meaning of "public interest," defining distinctly (bourgeois) private interests as public matters and projecting a vision of urban order—i.e., a world-class aesthetic—founded on property ownership. Thus, I specifically show how Indian cities' embourgeoisement is taking place not through a simple assertion of elite power, but rather through the more subtle production of a new aesthetic ordering of "the public" and its "proper" uses.

In section II, I proceed by describing the basis of nuisance law in India, with special emphasis on how it was understood and implemented through the 1980s and much of the 1990s. In section III, I analyze key rulings in the courts that led to a re-problematization of "the slum" in terms of nuisance in the early 2000s. In section IV, I examine a set of recent petitions filed in the Delhi High Court praying for the removal of slums to show how the interpretation of nuisance has been used to mark informal settlements as polluting and thus illegal. Specifically, I describe how the courts have consolidated a "new nuisance discourse" that codifies a "world-class" aesthetic and provides a visual basis for removing slums and visible signs of poverty. I conclude in section V by drawing out the implications of this "new nuisance discourse" for the future of urban development in India.

## II. The foundations of nuisance law

A nuisance is legally defined as "any act, omission, injury, damage, annoyance or offense to the sense of sight, smell, hearing or which is or may be dangerous to life or injurious to health or property" (Jain 2005, 97). In common law, nuisances are of two types: public and private, where the former is an "unreasonable interference with a right common to the general public" and the latter is a "substantial and unreasonable interference with the use or enjoyment of land" (Ibid). The primary statutes in the Indian legal system that provide channels to redress nuisance are Section 133 of the Code of Criminal Procedure, 1973 (hereafter Cr. P.C.) and Section 91 of the Code of Civil Procedure, 1908. Section 133 Cr. P.C. was written more recently with the intention of providing an independent, quick and summary remedy to public nuisance by empowering a magistrate to order its removal (Sengar 2007). The nuisances referred to in Section 133 include: obstructions to a public place or way, trades or activities hazardous to the surrounding community, flammable substances, objects that could fall and cause injury, unfenced excavations or wells, or unconfined and dangerous animals.[1] Nuisances are thus limited to two categories: (i) objects or possessions, and (ii) actions—categories that we will re-examine in section III below.

The landmark case pertaining to slum-related nuisance was decided in 1980 in Ratlam Municipal Council vs. Vardichan. In this case, the Ratlam Municipal Council was directed by a magistrate, empowered under Section 133 Cr. P.C., to construct and improve drains in a municipal ward to eradicate nuisance caused by stagnant, putrid water. Following appeals in the lower and high courts, the Supreme Court declared Section 133 Cr. P.C. to be the primary remedial mechanism for dealing with public nuisance: "Wherever there is a public nuisance, the presence of Section 133 Cr. P.C. must be felt and any contrary opinion is contrary to law."[2] The judge further stated that Section 133 Cr. P.C. should be the main channel by which courts ensure that municipal bodies carry out their duty to provide clean and safe environments for city residents.

In this judgment, the court also clarified that the municipal authorities and *not* slum dwellers are the party responsible for nuisances arising from slums with inadequate municipal services. The judgment explained: "[T]he grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time,

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[1] The Code of Criminal Procedure, 1973, Section 133.
[2] AIR 1980 SC 1622. See also, AIR 1979 SC 143, Govind Singh vs. Shanti Sarup.

and openly thereafter, because under Nature's pressure, bashfulness becomes a luxury and dignity a difficult art…. [P]roviding drainage systems… cannot be evaded if the municipality is to justify its existence." The removal of public nuisance in slum-related cases, then, is through the application of positive technologies (e.g., building drainage systems). That is, instead of removing or disciplining those denied adequate sanitation services, government here should operate through positive means to manage and mitigate waste and effluent and thus improve the population subjected to the same. Throughout the 1980s and early 1990s, the Ratlam decision set a precedent for upholding the statutory duties of municipal authorities to ensure public health, particularly that of slum residents.[3]

In this context, it is useful to examine the character of petitions filed during this same period by private RWAs seeking judicial intervention to address slum-related nuisances, the type of petition that has become a major instrument of slum demolition today. As an example, take the case of K.K. Manchanda vs. the Union of India,[4] a matter that appeared before the Delhi High Court regularly until 2002 and that became the lead petition in a summary ruling of 63 related slum matters that we will discuss in detail in the following section. The petitioner, the Ashok Vihar RWA, submitted that residents were aggrieved by the squalid conditions of a vacant piece of land in front of their colony that, according to the zonal plan, was supposed to be a "Green Belt-cum-Community Park." The petition states that the primary source of grievance is "public nuisance" and "health hazard" created by nearby slum dwellers' use of this land as an "Open Public Lavatory": "Adjacent to this Green Belt… there are large number of jhuggies and jhompries [huts] situated in the said vicinity…. [and that] people residing in these jhuggies… make use of this Public Ground… for easing themselves throughout the day [*sic*]." The petition goes on to say that this has made the lives of the RWA residents "miserable" and has "transgressed their right to very living" because "thousand of people easing themselves pose such uncultured scene, besides no young girls can dare to come to their own balconies throughout the day [because] obnoxious smells pollute the atmosphere [, thus] the entire environment is unconducive to public health and morality [*sic*]."

The petition thus clearly states that the source of public nuisance faced by the petitioner is slum dwellers' misuse of public land. Yet, because the petition was written in a discursive context structured by the Ratlam decision and the strict definition of public nuisance provided above, the petition does not target the slum itself, as similar petitions filed a decade later would do. Rather it states that the petitioner is aggrieved "Because the inaction on the part of the Respondents [the

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[3] See, for example, CA No. 1019 of 1992 in the M.P High Court, Dr. K.C. Malhotra vs. State of M.P.
[4] CWP No. 531 of 1990 in the Delhi High Court.

Delhi Administration and DDA] has posed various problems like public indecency, public immorality, health hazard etc. which the Respondents are statutorily liable to control…." Following the norm set forth in the Ratlam decision, the petition thus states that the slum residents are forced to ease themselves on public land because "there is no provision of latrines (Public Toilets) for the people residing in these jhuggies." Again, the blame for the public nuisance falls upon the authorities, as is clear from the petitioner's prayer that the court order the authorities to build a community toilet near the slum, develop the vacant land into a community park, and control access to the park by building a boundary wall. In 1992, the court disposed the petition while ordering the respondents to prevent the slum residents from defecating in the park and to build public latrines.

The problem defined and targeted in this case therefore had nothing to do with the presence of the slum or its legal basis; rather, it merely concerned the nuisance-causing activities of this community. Furthermore, the courts used nuisance law to provide municipal services to slum dwellers. In the following section, we will examine how nuisance has been redefined in such a way that this same category of the population gets re-read as themselves a nuisance.

While cases through the mid-late 1990s continued to rely on the Ratlam decision in dealing with slum-derived public nuisances, a new problematization of the slum begins to emerge within juridical discourse at the same time, a trend that portends how slums would be seen by the beginning of the next decade. This trend begins to surface in B.L. Wadehra vs. the Union of India[5], a case addressing the problem of inadequate waste disposal in Delhi. Whereas the original petition concerned the failure of the MCD to dispose of municipal waste across the city, and whereas the final orders directed the MCD to fulfil its statutory duties to "collect and dispose of the waste generated from various sources in the city" by increasing the efficiency of waste collection, the judgment makes occasional mention of a growing "problem" of the slum. The MCD in particular presents slums as a key problem obstructing it from carrying out its duties, stating in its affidavit that because of "problems of Jhuggi Jhompri Clusters [and] floating population…, it is not possible to give the time schedule regarding the cleaning of Delhi as directed by this Court." While this type of statement does not yet target slums for demolition, it forms the basis on which future decisions equating slums with nuisance will rely.

## III. Equating slums with nuisance

[5] 1996 2 SCC 594.

In 2000, highlighting the need for Delhi to be the "showpiece" of the country, the Supreme Court's judgment in Almrita Patel vs. the Union of India[6] radically altered the discursive terrain of nuisance law. Without mention of the Ratlam decision, this judgment begins where the Wadehra case had left off by hauling up the municipal authorities for failing to improve Delhi's waste disposal situation. However, the court here quickly introduces a new problem in addressing this citywide nuisance: "when a large number of inhabitants live… in slums with no care for hygiene, the problem becomes more complex." Based on the inherent deficiencies of the slum population, this sentence declares, slums are spaces of filth and nuisance, lacking basic concern for health and environment.

These words set the tone for the following paragraph, wherein the distinction between slums and slum-derived waste is blurred:

> Instead of 'slum clearance' there is 'slum creation' in Delhi. This in turn gives rise to domestic waste being strewn on open land in and around the slums. This can best be controlled… by *preventing the growth of slums.* The authorities must realize that there is a limit to which the population of a city can be increased, without enlarging its size. In other words the density of population per square kilometre cannot be allowed to increase beyond the sustainable limit. Creation of slums resulting in increase in density has to be prevented…. It is the *garbage and solid waste generated by these slums* which require to be dealt with most expeditiously (emphasis added).

And so emerges the new definition of nuisance. Nuisances in the city, it is stated, originate from overpopulation and slum growth; not from the government's failure to provide municipal services or low-income housing as guaranteed in the Delhi Master Plan. If we examine the two italicized word clusters shown above, we find that this paragraph not only redefines nuisance, but also proposes a new solution: "waste generated by these slums" can be dealt with "by preventing the growth of slums."

The formal definition of nuisance described in Section II included only particular categories of objects possessed, or actions performed, by an individual or group, whereas the current interpretation includes individuals or groups themselves as possible nuisance categories. This vastly expands the range of procedures that can be administered: no longer simply regulating the nuisance-causing behaviour of individuals, we will find that nuisance law can soon be used to remove

[6] 2000 2 SCC 679.

individuals themselves. Order number six in the same judgment sets the stage for this very strategy in future cases: "We direct [the respondent authorities] to take appropriate steps for preventing any fresh encroachment or unauthorized occupation of public land for the purpose of dwelling resulting in creation of a slum. Further appropriate steps be taken to improve the sanitation in the existing slums *till they are removed and the land reclaimed*" (emphasis added). Here, it is clear that the court sees the need to remove all slums to resolve the problem of municipal waste in the city. Thus, within the space of a few paragraphs, the strategic implication of nuisance law shifts from a positive technology of building municipal infrastructure to a negative and disciplinary technology of elimination and displacement. The MCD's lackadaisical approach to installing public waste bins, the main problem raised in the Almrita Patel petition, leads to a court order to eliminate the residential spaces of the working poor, and the "polluting poor" discourse is (re-)born.[7]

The statement "slums are illegal" and reference to slums as "illegal encroachments" gained widespread circulation in judicial discourse only after the Supreme Court's equation of slums with nuisance in the early 2000s. If we look back at petitions and court matters filed before the main orders from Almrita Patel were issued, for example the Manchanda petition we examined in the previous section, there is little to no mention of slums as "illegal encroachments." Where encroachment or misuse was accused, it was buoyed by concrete evidence related to a land use violation. Such is not the case with contemporary petitions filed against slums, as we will see in section IV.

While the Almrita Patel judgment inaugurated a key discursive shift regarding slums and nuisance and marks a critical break from previous case law, it was a case proceeding before the Chief Justice of the Delhi High Court in the early 2000s that gave technical traction to this new discourse by designating a program of slum removal capable of re-inscribing Delhi's landscape according to the moral grid of filth and nuisance.

In 1999, the petitioner in the Manchanda case filed a contempt motion against the municipal authorities for failing to improve the environment in its neighbourhood. Prior to the continuation of this matter, however, numerous writ petitions "mostly filed by various resident associations of colonies alleging that after encroaching the public land, these JJ clusters have been constructed in an illegal manner and they are causing nuisance of varied kind for the residents of those areas"

[7] Anti-poor environmental discourse has circulated widely in India since colonial times (see Prakash 1999; Prashad 2001; Sharan 2006). For a discussion of contemporary bourgeois environmentalism in Delhi, see Baviskar (2003). For historical uses of nuisance law to facilitate industrial development, see Anderson (1995) and Rosen (2003).

appeared before the court.[8] Therefore, the court lumped these 63 related petitions together under the lead petitions of Pitampura Sudhar Samiti[9] and K.K. Manchanda[10] while embarking on the stated goal of taking up "the larger issue of removal of unauthorized JJ clusters from public land which were in the vicinity of various residential colonies." Here, we already find a stark contrast with the court's approach to the Manchanda case in the early 1990s. The introductory comments to the judgment (hereafter called the Pitampura judgement) issued in September of 2002 clearly enunciate the purpose behind bringing these 63 cases together: to rid Delhi of the persistent nuisance of JJ clusters. An interim order passed earlier in 2002 justified this goal by invoking the problem of overpopulation in controlling slum-related nuisance: "the agencies… have not taken any effective steps to check the growth of these jhuggies which are still mushrooming on public land."

However, the task of removing the more than a quarter of Delhi's population living in slums required a far more complex assemblage of justificatory argumentation than the simple description of their "uncontrolled growth." This is so because Delhi's more than one thousand JJ clusters did not surreptitiously crop up (like mushrooms) in Delhi's shady, vacant corners. Rather, they have a complex legal and political history that includes formal entitlement to 25% of residential land, only a fraction of which they were provided.[11] Further, the Delhi Government's various resettlement policies protect slum residents from demolition without compensation. In fact, just months before the Pitampura judgment was passed, the Planning Commission published a report explaining Delhi's slum problem as the direct outcome of the DDA's failure to implement the mandatory 25% housing provision for the Economically Weaker Sections (EWS). How then was the court able to flout the poor's legal and regulatory protections in favour of the more recent and seemingly offhand remarks of the Almrita Patel judgment?

The Pitampura judgment begins by discursively dividing "the problem of the slum" into two individual dimensions: "One is the removal of JJ clusters and the other is their rehabilitation." Because the second aspect was pending before a different bench of the High Court[12] during the proceedings of this case, the court here determined to focus on the removal of JJ clusters alone.

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[8] CWP No. 4215 of 1995 in the Delhi High Court.
[9] Ibid.
[10] See note 5 above.
[11] Although the Delhi Master Plan entitles the Economically Weaker Sections (EWS), the lowest income category defined by the state, to 25% of residential land, this population today occupies less than 2% of Delhi land (Batra 2007). See Verma (2002), for a discussion of Delhi's slum population as what she calls "Master Plan implementation backlog." Verma deftly shows how the current slum population is equal in size to the gap between the EWS housing stock the DDA was supposed to build according to the *Delhi Master Plan 2001* and the DDA's actual EWS housing provision.
[12] Wazirpur Bartan Nirmata Sangh vs. Union of India and Okhla Factory Owners' Association vs. Govt. of NCT of Delhi, CWP No. 2112 of 2002, 108(2002) DLT 517.

Uncoupling Delhi residents' entitlement to land and right to live in the city from their present place of residence was an unprecedented twist in logic. In hindsight, however, this uncoupling appears the only way that the courts could simultaneously sustain the position that slums are spaces of filth and nuisance *and* that slum dwellers are entitled to land and livelihood. Once the question of the entitlements of the urban poor to public land (i.e., the question of "rehabilitation") was bracketed off,[13] the court could easily proceed to summarize the entire history of slum settlement in a single sentence: "There is large scale encroachment of public land by the persons who come from other States." That is, slum dwellers are alien, come from "other" places, and deprive the true residents of Delhi of what is rightfully theirs. Despite 45 years of the DDA's existence and a longer history of informal settlements in Delhi, the court disregards the messy conditions that led to the development of slums[14] and declares: "There is no denying the fact that no person has right to encroach public land…. [I]t is the statutory duty cast upon the civic authorities… to remove such encroachments."

From this text, we see that legality is primarily gauged by the character of a settlement—is it on public or private land? Is it a formal or informal colony? The question of a settlement's legal status now ignores (i) the economic and political context that led to the use of public land for informal housing, (ii) the fact that residents of these spaces have been de facto formalized by receiving various forms of state-issued residence proof (e.g., ration and identity cards, registration tokens), and (iii) the DDA's patent failure to fulfil the statutory housing provisions of the Master Plan. Separating the question of entitlement from one's present residential status, then, does not treat these two issues as logically distinct, as the tone of the judgment would suggest. Rather, this discursive separation makes accessing one's housing entitlement incumbent on his current settlement status.

The judgment next briefly acknowledges the second aspect of the slum problem—slum dweller's entitlement to public land—but denies its relevance by referring to the logic of nuisance: "No doubt, shelter for every citizen is an imperative of any good government, but there are *cleaner* ways to achieve that goal than converting public property into slum lords' illegal estates." "Cleaner" is of course the key word in this sentence, here used as if it had a specific legal referent. However, it is not clear to which statute this word may be referring. One might think that the legal procedure for addressing cleanliness would derive from nuisance law, but the entire judgment makes no reference

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[13] This logic has been applied to subsequent cases as well. For example, see Federation of Paschim Vihar Group Housing Societies vs. MCD, CWP No.17869 of 2005 in the Delhi High Court, order dated October 6, 2005.
[14] During previous cases, judges considered the circumstances leading to the settlement of a slum before passing judgments. For example, see Olga Tellis vs. Municipal Corporation of Greater Bombay, AIR 1986 SC 180, and Ahmedabad Municipal Corporation vs. Nawab Khan and Ors., AIR 1997 SC 152.

to section 133 Cr. P.C., the key nuisance statute. Rather, this word, "clean," derives its effectiveness from the dominant discourse of nuisance we have been describing. That is, "cleanliness" becomes a symbolic code of settled meaning within judicial discourse, agreed upon without explication of its origins or legal foundation.

If it is not yet clear that the new discourse of nuisance is the primary mechanism of slum demolition in the Pitampura case, consider the judgment's final paragraph before the bench's orders are recorded:

> The welfare of the residents of these [RWAs'] colonies is also in the realm of public interest which cannot be overlooked. After all, these residential colonies were developed first. *The slums have been created afterwards which is the cause of nuisance* and brooding [*sic*] ground of so many ills. The welfare, health, maintenance of law and order, safety and sanitation of these residents cannot be sacrificed and their right under Article 21 [of the Indian Constitution] is violated in the name of social justice to the slum dwellers. Even if the government and civic authorities move at snails pace… for the rehabilitation of these clusters, this is no excuse for continuing them at the given places [*sic*] (emphasis added).

This paragraph provides the logic upon which dozens of JJ clusters would be demolished in the subsequent five years. The declaration that slums are "the cause of nuisance" completes the discursive reworking of nuisance and establishes a new legal precedent for informal settlements.

Let us now examine three components of the Pitampura judgment's discursive work. First, this paragraph divides "the public" into two categories: "normal" residents of formal colonies and slum dwellers, the former owning private property and the latter occupying public land. The judgment states that because the former category own their property, came "first," and suffer from the nuisance of the latter's presence, their "right to life" under Article 21 of the Constitution should trump the latter's. This marks a change in the interpretation of rights, away from a framework envisioning the even distribution of rights across a population and in favour of a zero-sum conception of rights in which the enhancement of one's well being necessarily detracts from another's. It is in this vein that the judgment defines slum dwellers as a secondary category of citizens whose "social justice" becomes actionable only after the fulfilment of the rights of residents of formal colonies.

This decision reversed the prevalent interpretation of the "right to life" in Article 21 regarding slum dwellers that was established almost twenty years earlier in Olga Tellis vs. Bombay Municipal Corporation.[15] Whereas the Olga Tellis judgment emphasized the (alienable) right of the working poor to occupy public land to fulfil their livelihood requirements, the interpretation advanced in this judgment elevates the quality of life and enjoyment of land for propertied citizens over the livelihood of slum dwellers.[16] This is the transformation of Article 21 lamented by most critical legal studies of slum demolitions (see Bhushan 2006; Ramanathan 2005). However, the Pitampura judgment clearly shows that it is only through the new mechanisms of nuisance law that this reversal is enacted. That is, the reinterpretation of Article 21 is a legal effect of the new nuisance discourse, not its cause. The new construal of Article 21 becomes an implicit and necessary effect of this discourse because, once it is established, this discourse inheres a set of assumptions about (i) what defines the proper citizens of a city—residents of formal colonies, (ii) who constitutes the "public" in whose interest "public interest" is defined—private property owners, and (iii) the elements of a "world-class city"—an urban environment that is clean, nuisance-free, and thus slum-free. Nuisance discourse is so powerful, then, precisely because in performing the simple semiotic task of transforming what everyone knows—"slums are dirty"—into the new truth statement that "slums are a nuisance," it simultaneously carries out much deeper ideological work. By rendering the statements "slums are illegal" and "slums are nuisances" acceptable, it reorients the terrain of citizenship, social justice and access to the city—categories that would typically fall in the domain of Article 21. Once these categories have been re-engineered, the reinterpretation of Article 21 becomes but a logical extension of the new nuisance discourse.

The second effect of the new nuisance discourse, which derives from the first, is a blurring of the distinction between public and private nuisance. If we return to the above quoted paragraph from the Pitampura judgment, it becomes clear that the court is concerned with removing impediments to the security and welfare of private colonies. This concern perfectly overlaps with the definition of *private* nuisance provided in section II—a "substantial and unreasonable interference with the use or enjoyment of land," meaning private property. Yet, each of the cases discussed in this paper was filed as public interest litigation (PIL), a requirement of which is that the matter affects the broader public, not only a private party. Whereas the cases in question are ostensibly treated as matters of *public* nuisance, many of the actual grievances fall under the strict definition of

[15] See note 14 and P.G. Gupta vs. State of Gujarat, (1995) Supp. 2 SCC 182.

[16] See Ramanathan (2006) for a discussion of the Olga Tellis case and the interpretation of Article 21 therein.

*private* nuisance; it is thus apparent that the distinction between public and private is breaking down in the course of these hearings; or, as Anderson (1992, 17) found in the colonial context, nuisance begins to serve as "the coercive arm of property rights," defending private interest in the name of public purpose.[17]

To better grasp the import of the blurring of private and public nuisances taking place today—and to understand how it is used to impose a distinctly bourgeois sense of social order over public space—let us return to the distinction between "normal" society and slum dwellers, which we found above to rest on the variable of property ownership. This was even more categorically stated when the High Court distinguished between "those who have scant respect for law and unauthorisedly squat on public land" and "citizens who have paid for the land."[18] Once land ownership is established as the basis of citizenship as such, the defense of private property becomes an elevated concern. That is, when "the public" is defined by its ownership of property—and those without private property are excluded from this category—the minimization of private nuisance or the defence of private property becomes a matter of public interest. Thus, whereas the first effect of this judgment was to divide "the public" into two categories—property-owning citizens and others—the second effect is to reinvest "the public" with the attributes of the first of these groups. This is nothing less than the juridical embourgeoisement of Delhi, a privatization of the definition of public life and interest: the public's right is to act according to private interest, and private interest is what earns one the right of public life (cf. Marx 1844 [1994]).

This construal of "the public" has stark implications for the prosecution of nuisance and the overall manner in which land use is legally treated because, as Diwan and Rosencranz say in their review of environmental case law in India, "The test which has always been found to be useful in distinguishing… [whether a nuisance exists or not] is the test of ascertaining the reaction of a reasonable person according to the ordinary usage of mankind living in a particular society in respect of the thing complained of" (2001, 97). That is, nuisance is defined as conduct that the court

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[17] Anderson (1992, 15-6) notes of colonial jurisprudence in India: "Propertied groups were able in many instances to invoke public nuisance provisions against anyone threatening the value of their property." However, he found that such claims, in which "public nuisance complaints were blatantly driven by private material interest," "gave rise to some alarm in judicial circles" prompting some judges "to issue warnings of abusive or improper litigation" (16). Such litigation was dismissed outright in the post-colonial period until approximately 2000, when the defence of private property owners' civic sensibilities (and land values) started to be treated as a matter of public interest. Indeed, contemporary applications of nuisance law closely resemble those under British rule, in which nuisance was a category invoked to maintain the boundary between native and European, public and private (see also Kaviraj 1998; Legg 2007; Sharan 2006).

[18] Okhla judgment, see note 13. The judgment goes onto say that the former occupy areas of land adjacent to the latter, making the latter "inconvenienced": "An unhygienic condition is created causing pollution and ecological problems. It has resulted in almost collapse of Municipal services." Thus, we come full circle: inadequate municipal services are not the cause of nuisance, but rather the outcome according to the new nuisance discourse.

determines to be outside the range of what a "reasonable person" would do. Once "a reasonable person" and "ordinary usage of mankind" are defined in terms of residents of formal residential colonies, who make up less than 25% of Delhi's population (GNCTD 2004), the conduct of slum dwellers can easily be labelled deviant and unreasonable, be it even their mere existence. Whereas the Ratlam decision discussed in section II sympathized with the compulsion slum dwellers face to defecate in the open, this same act in the current legal environment comes to represent the behaviour of a population with "no care for hygiene";[19] a clear affront to urban order; and, as the Delhi High Court declared, an impediment to the "building of modern India."[20] This construal of legality flows from the view that the protection of private property is a component of public nuisance prosecution.

Coming to the third effect of the new nuisance discourse, we find that once slum dwellers' lives are defined as outside the normal range of citizen conduct, their access to legal appeal is also questioned. For, if they are outside of normal citizenship, then the procedures for administering their conduct will also fall outside the normal domain of civil society. It is in this capacity that the final order of the Pitampura judgment states: "We may also note that some petitions were filed by various occupiers [slum residents] against whom Orders for removal were passed…. Since they are encroachments of public land… they have no legal right to maintain such a Petition." This statement militates against the position established by the Supreme Court in 1996: "When an encroacher approaches the Court, the Court is required to examine whether the encroacher had any right and to what extent he would be given protection and relief." [21] Here, the possibility that an "encroacher" has a "right" to occupy public land is maintained. That is, an encroacher of public land is not presumed *ex ante* to be illegal. However, the definition of citizenship does not extend as far in the present context as it did in 1996, for the new discourse of nuisance has adjusted the procedures of natural justice.

Today, as we will see in the next section, slum residents have become objects to be managed and disposed of, not citizens with rights. This recalls Chatterjee's (2004) distinction between "civil society"—the privileged domain of citizens wherein rights are defended through law—and "political society"—the extra-legal domain through which non-citizens informally negotiate political representation and security. Only, whereas Chatterjee describes these as stable categories springing from post-colonial state form, the analysis here shows how they are actively produced through

[19] See note 7.
[20] CWP No. 6553 of 2000 in the Delhi High Court, order dated February 16, 2001, an order banning open defecation.
[21] See note 15, Ahmedabad Municipal Corporation, paragraph 20.

struggle over the public/private divide. The contemporary bourgeoisification of Indian cities, then, cannot be summarized as a simple oscillation of power from "political society" to "civil society". Rather, we have to trace how the division between these categories is maintained and given meaning through the mechanisms of law and state.

**Section IV. Nuisance discourse as mechanism**

The previous section tracked the emergence of what I have been calling the "new nuisance discourse" and how it has recalibrated the factors used to determine a settlement's legality. In this section I will show how petitioners' invocation of slum illegality along the parameters of nuisance has become an effective mechanism of removing slums. Specifically, by submitting petitions against slums as nuisances, petitioners are able to bypass typical eviction procedures. Here, I analyze the factors that drive this nuisance-based demolition mechanism by examining five civil writ petitions filed in the Delhi High Court,[22] each of which uses the new nuisance discourse, was filed by an RWA, and led to a slum demolition in the mid-2000s. To understand how the new nuisance discourse is activated, I begin by briefly identifying discursive devices—turns of phrase producing a specific effect—common across the petitions. These reveal the patterns by which "nuisance" gets identified empirically and is summoned as a key term that transforms the identification of "slums as dirty" into the legal claim that "slums are nuisances."

The first discursive device used by all five petitions is reference to slums as a problem of overpopulation: "the area has virtually turned into a slum and the illegal and unauthorized encroachments has not only double, tripled over the years but has attained mammoth proportions and is threatening to burst at its seams [*sic*]."[23] The words "bursting", "infesting", "infectious" or "mushrooming" are invariably used to evoke neo-Malthusian fears that the poor's mere presence will endanger the welfare of society at large: "The slum dwellers are living in highly infectious and contagious conditions thus exposing themselves as well as the residents of the society to epidemics."[24] Three of the petitions goes so far as to dehumanize slums by using the word "slum" not as a noun, but an adjective. Slums are then not places in this discourse; "slum" is a condition or a disease that infects certain spaces and must be eliminated, lest it spread to purer places. One

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[22] CWP Nos. 593 of 2002, K-Block Vikas Puri RWA vs. MCD; 6160 of 2003, Maloy Krishna Dhar vs. Govt. of NCT Delhi; 8556 of 2005, Kailash Fraternity vs. Govt. of NCT Delhi; 3494 of 2006, Pawan Kumar vs. MCD; and 9358 of 2006, Jangpura RWA vs. Lt. Governor of Delhi.

[23] CWP No. 593 of 2002.

[24] CWP No. 9358 of 2006.

concrete discursive device that plays upon this fear of "society" becoming slumified is the emphasis in four of the petitions on the special problem of slum dwellers' open defecation; two of the petitions go so far as to include photographs of residents "caught in the act": "these people defecate in the open creating ghastly scenes and spreading foul smell and infection."[25] Overall, the overpopulation device is used to show the un-civic conduct of slum dwellers and the importance of removing them to maintain Delhi's "world-class" image.[26]

The second discursive device shared by all five petitions is the description of the dual categories of citizenship explored in section III: one, rightful, tax-paying citizens who live in formal colonies and the other, unlawful residents of slums. Four of the petitions bolster this viewpoint by explicitly relying on the interpretation of Article 21 that prioritizes private property owners over all others (see section III). Further alluding to the second-class status of slum dwellers, four of the petitions describe formally non-evictable actions like slum dwellers' un-metered use of electricity or hosting of "mass celebrations" that deprive RWA residents of resources and "tranquillity" as a justification for slum removal. Three of the five petitions also argue that slum dwellers are alien by citing the presence of "anti-social" or "criminal" elements and people of "Bangladeshi origin" in slums.

These common discursive devices reveal the petitioners' middle class anxieties over urban environmental order, but more importantly show the channels by which slums are equated with nuisance in contemporary petitions. However, to see how "nuisance," once established, gets calibrated to a legal framework that requires slum demolition, let us look at the basis on which illegality is adduced in the petitions.

Each of the five petitions makes reference to "illegal slums" or describes "illegal/unauthorized encroachers" more often than it provides any specific details or discussion of what makes the slum in question illegal. None of the petitions state an explicit statutory basis for eviction. So, although "illegal" is used as if it was a precise term, it does not actually carry any statutory precision. Therefore, to determine what these petitions infer when they describe slum illegality, I conducted a line-by-line analysis by marking lines in the petitions' text based on the justification they provide for requesting demolition. Because the primary statutory basis on which slums can be, and historically have been, demolished is their violation of land use codes, I tracked lines in the petitions that make explicit mention of *land use* as a basis for the petitioner's demolition

[25] Ibid.
[26] The courts' reference to Delhi as a "showpiece", "heritage", "world-class" and "show window" city are widespread since the early 2000s, showing the importance the judiciary places on the outward, aesthetic appearance of the city.

request. The second category I tracked consists of lines referring to the *slum as a nuisance*. Before presenting the results from this analysis, let me clarify that the argument here is not that nuisance is the only basis for slum demolitions cited in the courts today.[27] The land use category of the land on which slums are settled continues to play a role in slum demolition cases. However, petitions targeting slums for land use violations were filed regularly before the current round of slum demolitions. What is *new* and dominant about current juridical discourse about slums is the import accorded to nuisance.

In the five petitions analyzed, lines referring to land use as the basis for demolition appeared 139 times, whereas lines referring to slums-as-nuisance appeared 346 times, or two and a half times more frequently. In all of the petitions, nuisance-based lines appeared at least fifty percent more frequently than land use-based lines. This shows that these petitions rely most forcefully on nuisance-based argumentation for declaring slums illegal. We can therefore say that the declaration of slums as a nuisance performs their illegality, and conversely, declaring slums illegal presumes their ontological status as a nuisance.

Related to the treatment of "slum illegality" as an ontological given is the petitions' extensive use of photographs *showing* slums-as-nuisances. These images appear in the petitions' annexures and show both the presence of the slum and what the petitioner considers ill effects of the slum's presence: accumulated trash, standing water, open defecation, etc. The manner in which these images are described makes it clear that the petitioner expects the court to agree that the photos demonstrate a need to remove the slum: "The acuteness of the situation can [be] seen clearly from the photographs of the affected area."[28] All of the petitions' bold, dehumanizing claims about slums as spaces of filth are given moral license upon the presentation of a few photographs. It is useful to note here that the Manchanda petition examined in section II, which was submitted prior to the rise of the new nuisance discourse, did not include such photographs. This type of depiction therefore appears as a new visual technology that puts the bench in a position to see slums and slum-derived nuisance as one in the same.

The power of this technology is revealed in the case of R.L. Kaushal vs. Lt. Governor of Delhi, the petition for which differs from the five nuisance discourse-based petitions examined here in that it neither prays for the removal of a slum nor uses any of the above discursive devices. This petition was submitted "for better civic amenities and for nuisance caused by open wide drain

[27] Likewise, nuisance-based petitions are not the only type used to target slums.
[28] CWP No. 6160 of 2003.

[*sic*]"[29], but does not make a single mention of a slum. Only in the petition's annexures containing letters to elected representatives and photos of the drain is it revealed that a slum exists beside the drain. Nonetheless, the court, noticing the slum's presence in the photos,[30] ordered its demolition without inquiring into the details of the settlement's size, location, history, or legal basis.

Each of the five petitions examined here was met with a positive response by the Delhi High Court, which not only ordered the neighbouring slums to be cleared, but in many cases also adopted the language of nuisance. As the court stated in an interim order in the Vikas Puri case:

> The encroachment has not been removed and it is this lackluster approach of the DDA which has resulted in unscrupulous elements to make encroachment on government land…. [W]e only observe that on the one hand a citizen has to pay handsome price for acquiring land… for his habitat and on the other hand unauthorized encroachment and habitat on government land is allowed to go on, [which]… deprives the rights of citizens of Delhi to water, electricity and other civic services. The right of honest citizens in this regard cannot be made subservient to the right of encroachers [*sic*].[31]

Here, we see the same process of dehumanization found in the RWAs' petitions repeated by the bench: slum residents are called "unscrupulous elements," whereas RWA members are called "citizens." And, in constructing the second sentence quoted above in the passive voice (i.e., without a subject), the court completely erases the slum subject from the order. This makes the solution to the "problem of the slum" appear purely technical, despite its deeply ethical and political nature. In reiterating the reasons for needing to remove the entire slum in question, the order further states:

> We have seen from the photographs filed as to how illegal electric connections have been taken, the Delhi Vidyut Board has been used as a junk yard, service lane has been completely blocked [by carts and supplies], the encroachment has been made on road and footpath…. The whole area has been converted into a garbage landfill. No legal right is vested in the encroachers [*sic*].[32]

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[29] CWP No. 1869 of 2003 in Delhi High Court, order dated November 14, 2003.
[30] Ibid.
[31] CWP No. 593 of 2002, order dated March 8, 2006.
[32] Ibid.

Here, with the exception of "the encroachment… on road and footpath", none of these activities statutorily permit the removal of the slum. The huts built on the roads and footpaths, as shown in the drawing submitted by the petitioner, made up less than ten percent of the total area of the slum and were the most recently constructed. However, the court lumped the entire settlement together in passing its demolition order. The court's other observations here must then constitute the only reasons for clearing the entire settlement. On what basis do these activities—i.e., illegal electricity use, blocking a service lane with carts, and using vacant land for dumping garbage and scrap material[33]—add up to a demolition notice? "Illegal electric connections," according to the Electricity Act, 2003, require imposing a fine. The remaining activities are nuisances whose removal is governed by Section 133 Cr. P.C., which nowhere states that the party responsible for a nuisance is to be displaced. However, nuisance law today clearly has new legal and moral coordinates.

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The overall thrust of these five petitions shows that nuisance has today become the predominant discursive justification for slum demolitions, even when a land use violation is also identified. Further, even in the absence of petitions that specifically target slums for demolition, like the Kaushal petition just described, the courts themselves have taken up the task of identifying slums-as-nuisances and ordering their removal. This pattern emerged in the proceedings leading up to the demolition of the Yamuna Pushta, a slum housing more than 150,000 people on the banks of the Yamuna River. In a March, 2003 order in the Okhla case, the bench arbitrarily took cognizance of the problem of pollution in the Yamuna River, despite the lack of any mention of the issue in the original petition. While referring to other causes of pollution, the bench quickly identified the true source of the problem: "In view of the encroachment and construction of jhuggies in the Yamuna Bed and its embankment with no drainage facility, sewerage water and other filth is discharged in Yamuna water [*sic*]."[34] In the total absence of any evidence demonstrating the Pushta settlement's contribution to the Yamuna's pollution levels, the court passed its demolition order. After these orders were passed, the court continued to target slums as the primary source of Yamuna pollution by launching its own *suo moto* case.[35] And, like the RWA petitions we just examined, the most

[33] There is no indication that the slum residents alone were to blame for the improper garbage disposal.
[34] See note 13, order dated March 3, 2003.
[35] CWP No. 689 of 2004, The court on its own motion vs. Union of India.

"scientific" evidence presented in this case was a series of photographs prepared by the Ministry of Tourism ostensibly showing slum dwellers as "polluters."[36]

While the final judgment in this case does refer to the fact that Pushta existed on the Yamuna floodplain and thus violates the layout plan for the area, a handful of other developments with a different, what we might call "world-class," "look" than Pushta—including the Akshardam Temple (the world's largest and most "modern" Hindu monument), the Commonwealth Games Village, an IT park, and a Delhi Metro Rail depot—similarly fall on the floodplain. That the court targeted Pushta and ignored these developments proves that the nuisance logic formed the strongest basis for the demolition.

Closing with the Pushta case is useful because it neatly captures key characteristics of how nuisance has altered the terrain of judicial argumentation pertaining to slums. This case shows that the courts do not have anything close to what could be called a sound calculative basis for assessing whether a slum is a nuisance or not. Rather, if a slum *appears* to be polluting or filthy, based on a judge's subjective view of acceptable, "clean" conduct, then the slum is deemed polluting, a nuisance, and therefore illegal. This, as I will conclude by arguing, shows the extent to which today's planning decisions are primarily aesthetic.

## IV. Conclusion

The goal of this paper has been to move the conceptualization of Delhi's current slum demolition drive away from the abstract discussion of "anti-poor" or "neoliberal" courts and into the concrete domain of legal mechanisms and argumentation. Stating that the right to life under Article 21 of the Constitution is no longer interpreted in the pro-poor tradition of the past provides little insight into the actual legal means by which slum demolitions are carried out. The argument put forth here is that a discursive regime does not change based simply on a new outlook by judges or the entry of a new type of petition. Rather, such a drastic reorientation of juridical discourse requires an altogether new set of problems, a redefinition of terms, and a re-engineering of legal procedure and evidentiary practice. That is to say, rather than seeing the weakening of the right to life in recent court decisions as the cause of slum demolition, it might be more useful to see this weakening as the effect of a whole series of prior contestations across India over the meaning of citizenship, the

[36] In contrast, research by the non-governmental organization the Hazards Centre (Roy 2004) found that Pushta contributed only 0.33% of total sewage released into the Yamuna.

correct land disposition, and the vision of the city. Here, I have shown that the reinterpretation of nuisance law has been the key mechanism by which these contestations were, first, carried forward and, second, discursively justified by constructing the truth that "slums are nuisances."

As we saw above, the discursive portrayal of slums as nuisances is radically transfiguring Delhi's physical landscape and political economy.[37] It is enforcing a private property regime that has never before existed and redefining the terms of access to the city through the construction of property-based citizenship (cf. Roy 2003). This conclusion has serious implications for the future of Delhi and Indian urbanism more generally and might be used to more broadly explore contemporary processes of urban change in India. For one, discourse depicting Delhi (or other Indian cities) as an aspiring "world-class" city has been little analyzed to date. Yet, the coordinates of the moral grid created by the new nuisance discourse closely align with the vision of a world-class city. That is, spaces that *appear* polluting or unattractive—which unfavourably represent Delhi in its "world-class" pursuits—are being criminalized and cleared via nuisance law, even in the absence of accurate information about those spaces. Alternatively, developments that have the "world-class" *look* (e.g., the Commonwealth Games Village), despite violating zoning or building byelaws, are granted amnesty and heralded as monuments of modernity.[38] Returning to one of the formal definitions of nuisance laid out in section II—"any… offense to the sense of sight, smell, or hearing"—we see that "nuisance" could be broadly construed as *anything aesthetically displeasing*. In the context of cities driven by an elite aspiration for "world-class" status and in which the economy of appearances is of elevated importance, has nuisance become the legal foundation for a new aesthetic hegemony?

Recent studies of Indian cities in the post-reform (1991-) period posit that a bourgeois, consumerist, and globalist aesthetic is responsible for the rapid remaking of the Indian urban (e.g., Chatterjee 2004; Fernandes 2004). These works often presume that the constitution of a new elite—the "new Indian middle class"—in and of itself explains the consolidation of such a "world-class" aesthetic.[39] The mushrooming of malls, commercial complexes, flyovers, gated communities, and designated infrastructure—and the concomitant demolition of slums, expulsion of hawkers and vendors, and banishment of industry—is simply the supply to the "new middle class's" rising

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[37] The same process is underway outside of Delhi too. For an example from Calcutta, see Chatterjee (2004: 60).

[38] Numerous other examples of the DDA and courts allowing blatant land use violations for capital intensive development can be cited, including—perhaps most famously—the construction on Delhi's protected "ridge area" of India's largest shopping mall complex in Vasant Kunj.

[39] As Chatterjee says, "I suspect, however, that the idea of what a city should be and look like has now been deeply influenced by this post-industrial global image everywhere among the urban middle classes in India" (2004, 143).

demand. “World-class” discourse, here, is described as powerful, without showing how it derives and consolidates its power. While descriptions of the aspirations and political goals of the middle class are useful, we should not confuse a class’s political goals with its strategy, nor the ideology of a class with the institutional mechanisms by which its ideological position is consolidated. In other words, in asking what the forces remaking Indian cities today are, our conclusion should not be the political aspirations or urban visions of the elite. This tells us very little about how change occurs. Instead, we have to show the specific political mechanisms through which these goals get translated into real outcomes. In this paper I have examined how the law has codified middle class aesthetic norms, giving them material leverage over urban space. The new nuisance discourse, as a concretized inflection of bourgeois aesthetics, has given propertied residents of cities increasing power over the lives of the non-propertied, threatening to destroy the last vestiges of planned, integrated, and socialistic urban planning and, perhaps more importantly, public space.

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