

An Unlawful Law

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## An Unlawful Law

PERMIT me to make a correction in my article "An Unlawful Law" (June 25). I wish to delete the first paragraph of section v (page 1137, column 2). I also take the liberty of adding some fresh observations.

In section (ii) Mohammed Usman vs State of AP is cited because the Development Plan and Development Control Rules for Greater Bombay can be complied with by the rich, but the poor cannot afford to do so. Since unequals are treated equally, the protection offered by the Equality Clause is violated.

It was said in (v) that slum-dwellers may first be removed under various existing laws, such as the BMC Act and the Police Act; and that when they come back they can be arrested under these new criminal provisions. But in fact the Maharashtra Regional and Town Planning Act (MRTP Act) itself contains in S 55 a provision for summary demolition. "Where any person has carried out any development of a temporary nature unauthorisedly" applies to houses of the entire slum population of Bombay. A person so uprooted will not vanish. He will come back to the same spot or some nearby place. When he does that Section 52 operates on him. He is arrested without a warrant, he may not be released on his own bail, and can go to jail for three years.

The slum population of Bombay approaches four and a half million. Any of them may have his hut demolished whereupon the power to arrest him when he comes back compounds the initial arbitrariness. The slum population of Bombay grows by a lakh and a half every year, all of whom will be committing a cognisable offence. The constable must choose. But as no guidelines are provided for the choice, it is an uncanalised delegation of authority.

It could be argued that both the propositions of (iii) and (iv) in my article — the punishment must fit the crime and the grading of offences may not be destroyed by equating slumlord and slumdweller — are met because the choice of sentencing is left to "judicial discretion".

One does not wish to trammel the discretion of a judge. But the true range of offences and punishments should be set out in any legislation.

The action of a slumlord who undertakes development and of a slumdweller who is compelled to stay in the city are so essentially different in character as not even to be different points along the same curve. The object of the action in each case is relevant. The slumlord does it for profit, the slumdweller in order to survive. Article 21 cannot be invoked for any livelihood as a right should not interfere with the right of others. But the right to live is endangered when even existence at subsistence may be lost. The judge will be compelled to be arbitrary if the normal range which exists for the judicial process has been destroyed.

The only question for determination by a Court should be whether or not a range truly exists, simply in order to permit the normal operation of discretion. For such determination cannot be left to the subjective satisfaction of the Executive.

If the record of implementation is relevant for judging legislative intent in the case of the DC Rules, it is equally so for the amending Ordinance. Since it came into effect not one slumlord has been arrested, only slum-dwellers.

Finally, though I characterise legislative intention — as enunciated in the Objects and Reasons — as vindictive, of course in a Court only the question of its arbitrariness would arise.

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Bombay

### Racketeering in Asian Children

IN a letter under the above title in *EPW* of February 13, 1982, Gobinda Mukhoty, Charman of People's Union for Democratic Rights, was kind enough to draw attention to the allegation regarding traffic in Bangladesh children. I have been involved in exposing this traffic since the first of many parents in and around Dhaka petition me to trace and effect the return of their missing children, starting April 1977. Most of the children came from Dattapara Camp, Tongi, near Dhaka. Those responsible allegedly for removing these children came to trial in January 1983. About 100 Dattapara families

lost their children, but only seven children have been found — 1 died in Holland and 6 were adopted there. The Terre des Hommes-Netherlands (TDH-N) Director in Bangladesh was acquitted on charges of illegal traffic in these children in March 1983 due to the prosecution failing to produce material evidence. He has been relieved of his post; but neither TDH-N, nor the Anti-Slavery Society (UK), nor the Fraud Officer of the Commonwealth Secretariat in London can trace the missing children so far. Netherlands Inter-Country Child Welfare Organisation (NICWO), whose Bangladesh Representative was also the TDH-N Director above-mentioned, can only account for the seven children previously referred to, even though the aggrieved parents claim their children went through NICWO's Dhaka adoption centre.

Mukhoty in his letter also referred to my attempts to publicise the plight of these Dattapara families after I was deported from Bangladesh and came to Calcutta. Unfortunately, he described me as being engaged in 'Christian missionary social service work'. I am, in fact, totally opposed to all Christian proselytising activity, whether in India or Bangladesh, whether by local citizens or expatriates. Perhaps some confusion arose due to my receiving support for medical work with Calcutta destitutes from a variety of sources, including Christian organisations and individuals. But there are no religious (or political) strings attached whatsoever to this support. There is no Christian missionary element in my medical work at all. I am not, nor ever have been, a member of any Christian missionary organisation; and I oppose the missionary activity of the church into which I was baptised. My medical work is solely with the poor and the patients are treated without any religious discrimination.

JACK PREGER

Calcutta

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