

## Citizenship and Pipe Dreams: The law and politics of water access in Mumbai slums

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**Abstract:** *Indian cities are projected to be the home to an additional 250 million people by 2030. This growing population is putting increasing demands on municipal resources, with challenges for economists, planners and engineers. Yet, the projection also poses important questions for law and politics – who is validated as an urban citizen and who gets access to the city's infrastructure? For slum residents in Mumbai, access to water hinges on Maharashtra state law, which prescribes that slum residents who can prove that they have lived in the city since before 1 January 1995 are entitled to receiving municipal water. In reality, research from Mumbai shows that the likelihood of getting access, as well as the quality and quantity of water accessed, differs between Hindu and Muslim areas, regardless of how long residents in these areas have lived in the city. I find that the Mumbai slum puts to test the notion of legality and illegality, coming out as a grey space conducted by its own special set of rules. It is in fact a historical discourse of belonging and the political landscape of the city which determines who receives municipal water connections and who does not. In this setting, the 1995 cut-off rule has served to create room for further exclusion. The courts of law continue to uphold and reinforce a rule that is arbitrary and unenforceable in the slum context. This paper is a case study of sub-groups in Mumbai slums trying to access water. Applied generally, this case study demonstrates how law, politics and even physical space can be aligned in a manner so as to systematically refuse access to a particular minority group.*

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### A. Introduction

More than 50 per cent of Mumbai's residents live in slums, which cover just 5 per cent of Mumbai's land<sup>1</sup>. This paper revisits the slum and its flows of water, in order to understand how access to water marks the delineations of belonging and citizenship in Mumbai, and how law and politics produce and reproduce these narratives.

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<sup>1</sup> *World Bank 2009*, in: Stephen Graham, Renu Desai and Colin McFarlane, *Water Wars in Mumbai, Public Culture*, 25 (2013), p. 119.

I draw on anthropological and sociological research by Anand<sup>2</sup> and Graham, Desai and McFarlane<sup>3</sup>, which reveals how access to water in Mumbai slums varies for different residents of the city. Mumbai's municipal water provider, Brihanmumbai Municipal Corporation (BMC) provides some residents with a regular supply of treated municipal water, others with a limited supply at certain hours of the day and still others with none at all. Anand<sup>4</sup> and Graham *et al*<sup>5</sup> explain how the first category of regular supply is secured for middle-class and wealthier residents of the city. Slum areas may receive a limited supply of municipal water, but within the slum access appears to vary depending on the religious affiliations of the residents. Anand's and Graham *et al*'s studies show that whereas Hindu areas are often able to secure a BMC water supply, Muslim areas are less likely to do so.

Indian cities are projected to be the home to an additional 250 million people by 2030<sup>6</sup>. Urban spaces and demands on infrastructure are thus increasingly important areas of study. Urban slums in India have been addressed in much depth and detail by scholars from the fields of urban studies, geography and anthropology. Yet within legal academic literature, water issues in India have been studied more frequently in a rural context. Legal scholarship has not inquired into the urban slum with as much rigour and energy in recent years. This paper hopes to make a humble contribution of legal studies into the realm of urban India.

The paper proceeds in three parts: Part B provides a background to the analysis by briefly describing how water is accessed, setting out the applicable law and demonstrating how the law has effects in practice. Part C sets out the historical context of this paper by looking at the political developments around slums in Mumbai, as well as providing a background on the law on water access. Part D is the main analytical section of this paper, which considers how politics, law and notions of belonging have led to disparities of water access in the slum. This discussion leads me to provide in Part E a note on citizenship, which is really a reflection on how to conceptualise belonging and exclusion. I conclude with a summary of how politics, law, geography and imaginations work together to exclude Muslims from urban slums. This exclusion leads to a lack of access to municipal water. I recognise the cause for alarm where there is systemic exclusion, but also suggest some ways of addressing the problem.

2 *Nikhil Anand*, PRESSURE: The PoliTechnics of Water Supply in Mumbai, *Cultural Anthropology* 26 (2011), p. 542 -564; *Nikhil Anand*, Municipal Disconnect: On abject water and its urban infrastructure, *Ethnography* 13 (2012), p. 487 - 509.

3 *Stephen Graham, Renu Desai and Colin McFarlane*, Water Wars in Mumbai, *Public Culture*, 25 (2013), p. 115-142.

4 Anand (2011), note 2.

5 Graham *et al.*, note 3.

6 *World Bank*, Beyond the City Limits: Report Finds Rapid Suburban Growth in India, Potential for Sustainable Cities to Reduce Poverty, October 21, 2013. Available at: <http://www.worldbank.org/en/news/feature/2013/10/21/india-urbanization-report-beyond-sustainable-cities> (last accessed on 22 June 2015).

## B. Water Access in Mumbai Slums

Before setting out to analyse the law and politics surrounding access to water in Mumbai, I describe in this section how water is accessed by Hindu and Muslim slum residents in varying ways. This is based on the findings of anthropological studies conducted in Mumbai slums between 2009 and 2013, as well as some of my own observations from 2014. This section includes a factual description of how slum residents go about accessing water, the applicable law and the effect of the law observed in practice.

### *I. Water access in slum communities*

The largely Hindu residents of Meghwadi receive water with good pressure from piped municipal connections for a few hours a day<sup>7</sup>. Groups of residents have access to standpost connections, from which they can connect pipes to their homes with the help of hired engineers<sup>8</sup>. Anyone who has been in a slum area would recognise the narrow and exposed pipes, which transport the city's water into homes for limited periods during the day. The supply does remain precarious, as taps often stop working after a few years of use<sup>9</sup>. However, residents in this area have succeeded in maintaining a continued supply of water. Residents remain in a constant exchange with local political representatives to ensure access to the municipal water supply.

Not far from Meghwadi, in the predominantly Muslim area of Premnagar, the story is quite different. Anand describes how in Premnagar rusted old municipal pipes installed more than 40 years ago have leaked and run dry, leaving residents with an increasingly unreliable flow of water<sup>10</sup>. In the absence of reliable municipal water, different ways of accessing water exist within Premnagar. Some residents have resorted to installing booster pumps, which are expensive and illegal, to draw water into their homes<sup>11</sup>. These pumps have to be connected to the municipal pipes and Premnagar homes with the help of hired engineers and plumbers who are willing to disregard the regulations<sup>12</sup>. Those with booster pump privileges wake up before dawn to take turns to collect water, before residents in settlements at the bottom of the hill wake up and tap into the water supply. This collection happens through the alternating connection of various sets of pipes leading to different homes, or -- for poorer residents -- through utensils from a charity pump<sup>13</sup>.

7 Anand (2011), note 2, p. 553.

8 Anand (2011), note 2, p. 549.

9 Anand (2011), note 2, p. 549.

10 Anand (2012), note 2, p. 488.

11 Anand (2011), note 2, p. 557.

12 Anand (2011), note 2, p. 556-557.

13 Anand (2012), note 2.

To avoid the high costs of plumbers and electricity associated with booster pumps, other residents have reverted to a half-century old practice of drawing water from wells<sup>14</sup>. From Anand's research, these appear to be a mixture of old and new wells. Either way, the water from such wells is not potable and some wells are contaminated by sewage water<sup>15</sup>. This practice is not limited to Premnagar. In Rafinagar, another slum area in Mumbai inhabited predominantly by Muslims, residents have dug their own wells in acts of desperation<sup>16</sup>. Systemic dehydration and poor water supply in Rafinagar has led its residents to turn to a limited supply of extremely contaminated groundwater, which in turn has led to chronic health problems being extremely common<sup>17</sup>. A newspaper article in 2012 reported, “[t]he slum of Rafiq Nagar [Rafinagar] in suburban Govandi is a cesspool of filth, diseases and poverty. In 2010, this slum saw a series of child malnutrition deaths with independent findings pegging the level of acute child malnutrition at 900 children in one area alone”<sup>18</sup>.

Reasons for disparate supply are initially explained in technical terms: Premnagar is located on top of a hill, making supply more difficult<sup>19</sup>. However, Anand finds that the topographical problem is resolved by the city for another (Hindu) area by installing pumps at the bottom of the hill<sup>20</sup>. It quickly becomes evident that other reasons are at play in excluding Premnagar from the city's water network. Anand is given explanations in terms of “their people” versus “our people”, “dirty” versus “helpful”<sup>21</sup>. These explanations present the bottom line and the sense that Muslims in Premnagar somehow do not belong in the same way as the Hindu slum-dwellers in this area of Mumbai. Topography and geographical distinction may be a convenient method of disguising this prejudice.

## *II. The cut-off rule*

For slum residents in Mumbai, access to water hinges on Maharashtra state law, which until July 2014 prescribed that slum residents who can prove that they have lived in the city since before 1 January 1995 are entitled to receiving municipal water. This rule is part of a larger framework of laws that seek to regulate slums and slum rehabilitation. The original cut-off date of 1 January 1995 was amended and extended to 1 January 2000 by a bill passed in the State assembly in March 2014, formally being adopted through a Government

14 Anand (2011), note 2, p. 557.

15 Anand (2012), note 2, p. 487.

16 Graham et al (2013), note 3, p. 134.

17 Ibid..

18 The Hindu, Poll-bound Mumbai's problems are a class apart, February 13, 2012. <http://www.thehindu.com/todays-paper/tp-national/pollbound-mumbais-problems-are-a-class-apart/article2887186.ece> (Last accessed March 15, 2015).

19 Anand (2011), note 2, p. 554.

20 Anand (2011), note 2, p. 554.

21 Anand (2011), note 2, p. 555.

Resolution in July 2014<sup>22</sup>. It would appear then that those who can demonstrate that they have lived in Mumbai since before 1 January 2000 are entitled to receive municipal water from the BMC.<sup>23</sup>

Although the law provides for a public entitlement to water access, this access is not free of charge and is not supplied in an egalitarian manner to slum and non-slum areas. The cut-off date is not applicable to non-slum areas. In other parts of the city, water access is granted as part of the planning and approval procedures of new real estate developments. The BMC offers Mumbai residents who have a planned and approved municipal water connection 135 litres of water per capita per day. This volume of entitlement is reduced to a third, or 45 litres per capita per day for inhabitants of informal settlements which are connected to the city's supply system<sup>24</sup>. Furthermore, whereas planned connections may be per residential or business unit, in the case of slums, access is granted to groups of "hutment dwellers, preferably not less than 15 hutments"<sup>25</sup>.

### *III. The law in practice*

As seen in Anand's and Graham *et al*'s studies, securing water supply even where a legal right exists is far from straightforward. In reality, the process for legal access requires group action, multifold documents and the employment of a range of social and political networks<sup>26</sup>. Legal access is intertwined with intermediaries who have their own (non-legal) requirements and in some cases, as shown by the Premnagar example, meeting the legal prerequisites alone does not suffice.

At the time of Anand's fieldwork, the cut-off date for receiving access to BMC water was 1 January 1995. Groups of residents who can come together and prove that they have been living in the city since before then and satisfy the other administrative requirements may be granted BMC connections. Hence, Anand describes how in Meghwadi, the largely Hindu slum, residents set about to produce documents to prove residence since before 1995

22 *The Times of India*, Govt extends cut-off date for slum regularization to January 2000, July 23, 2014. <http://timesofindia.indiatimes.com/city/mumbai/Govt-extends-cut-off-date-for-slum-regularization-to-January-2000/articleshow/38884035.cms> (Last accessed March 15, 2015).

23 I am inconclusive about this as a case remains pending before the Supreme Court of India as to whether the State of Maharashtra can in fact extend the 1995 cut-off date (see the discussion on the *Janhit Manch* case below). It has been reported that the Attorney General's opinion was sought and that the introduction of the bill at the state assembly would not be held to be in contempt of court (see *The New Indian Express*, Maharashtra: Bill Extending Cut-Off Date for Slum Regularisation Passed, February 28, 2014. <http://www.newindianexpress.com/nation/Maharashtra-Bill-Extending-Cut-off-Date-for-Slum-Regularisation-Passed/2014/02/28/article2083120.ece> (Last accessed March 15, 2015)).

24 Graham *et al* (2013), note 3, p. 121.

25 Municipal Corporation of Greater Mumbai Hydraulic Engineer's Office Water Charges Rules (Effective from 1st February 2001 & Rates Revised from 1st August 2002), Appendix E.

26 Anand (2011), note 2, p. 549-550.

(regardless of whether they have actually lived in the city since then) and collect money to secure a municipal connection<sup>27</sup>. However, documentation and funds are not enough. In order to secure a BMC water connection, residents also need some form of political patronage. For example, Anand describes how every application for a BMC connection tacitly requires the written support of a politician requesting the application for the connection be approved<sup>28</sup>.

This also means that those with less political clout are at a disadvantage. Premnagar residents have lived in Mumbai longer than those in Meghwadi and have a stronger claim to legal water access<sup>29</sup>. However, they are unable to access the municipal water supply. Here, the largely Muslim residents lack the political networks that would allow them to rely on political pressure to gain access to the city's water.

### C. Historical Context

The examples of Meghwadi and Premnagar above show how entrenched political and power structures make for varying designs of demand for water. A historical context is required to understand this. In this section I contextualise the political reality of Mumbai by looking at the role of the Shiv Sena, followed by a presentation of the background to the 1995 cut-off rule.

#### *I. The Shiv Sena and politics in Mumbai*

Muslims account for approximately 13% of India's population, going up to 17% in urban areas<sup>30</sup>. Anti-Muslim rhetoric is prevalent in India beyond the boundaries of Mumbai or the state of Maharashtra, as evidenced by the growing popularity of the Hindu Right<sup>31</sup>. In particular, the Shiv Sena has succeeded in creating a structural bias against Muslims in Mumbai.

Doug Saunders has described how the Shiv Sena has come to occupy a specific role in Mumbai slums in the last 50 years<sup>32</sup>. The Shiv Sena started as a middle-class anti-minority movement, claiming allegiance with "sons of the soil" or those who came from the state of Maharashtra<sup>33</sup>. Congress authoritarianism in the 1970s and the non-recognition of rural In-

27 Anand (2011), note 2.

28 Anand (2011), note 2, p. 550.

29 Anand (2011), note 2, p. 555.

30 The percentages are based on UN Data collected in 2003, available online at: <http://data.un.org/Database.aspx?d=POP&f=tableCode%3A28> (last accessed July 10, 2015).

31 See e.g. Brenda Cossman and Ratna Kapur Secularism: Bench-Marked by Hindu Right. Economic and Political Weekly (September 21, 1996).

32 Doug Saunders, *Arrival City: How the Largest Migration in History is Reshaping our World*, New York 2010, p. 218-228.

33 Ibid., p. 221.

dians by established urbanites created political space for the Shiv Sena to take over a representation and patronage role in slums. Shiv Sena-appointed *dadas* came to represent community and family for rural-urban migrants<sup>34</sup>. In this manner, Marathi Hindu slum-dwellers in Mumbai came to form a large contingent of the Shiv Sena and are critical to the party's electoral success<sup>35</sup>. In recognition of this, *dadas* provide welfare and public services in the city, have created women support groups, are themselves rooted in slum communities and assist migration to Mumbai from Maharashtran villages<sup>36</sup>. In return, slum-dwellers are expected to provide their vote, campaign support during elections and especially the young men are required to be stand-ins for violent Shiv Sena tactics<sup>37</sup>.

The Shiv Sena has operated since the 1970s precisely to deepen cleavages between Hindus and Muslims in Mumbai slums. Saunders provides an insight into Shiv Sena founder, Bal Thackeray's praise and admiration for Hitler<sup>38</sup>. Thackeray identifies with Hitler in claiming to "bring his country up" and in the process labelling Muslims as the competitive "invaders"<sup>39</sup>. Through acts of apparent philanthropy infused with violence, Shiv Sena leaders and *dadas* release toxic fumes of sectarianism within slum communities. On the one hand, Hindu slum-dwellers are kept under the Shiv Sena's umbrella of control through forceful tactics and entrenched structures of dependence, and on the other, Muslims are increasingly marginalized as a separate sub-category of slum-dwellers with a diminished political voice.

## *II. Background to the 1995 cut-off rule*

Sharmila Murthy provides a detailed overview of the development of laws regulating tenure and water access in Maharashtra<sup>40</sup>. Murthy identifies the source of the 1995 cut-off date for water access in slums as being the Municipal Corporation of Greater Mumbai Hydraulic Engineer's Office Water Charges Rules<sup>41</sup> (the "Water Charges Rules"), created pursuant to Mumbai Municipal Corporation Act, 1888, in which Subsection 6.9 states that "stand post connections on meter measurements shall be given to residential structures in slum areas, which have come into existence prior to 1-1-1995 or any other date separately notified by

34 Ibid., p. 221-222.

35 Anand (2011), note 2, p. 547.

36 Saunders, note 32, p. 218 – 228.

37 Saunders, note 32, p. 219.

38 Saunders, note 32, p. 223.

39 Saunders, note 32, p. 222-223.

40 See *Sharmila L. Murthy*, Land Security and the Challenges of Realizing the Human Right to Water and Sanitation in the Slums of Mumbai, India, *Health and Human Rights*, 14 (2012), p. 61-73.

41 Effective from 1st February 2001 & Rates Revised from 1st August 2002.

Government of Maharashtra in this behalf”<sup>42</sup>.<sup>43</sup> Water access is thus connected to the existence of a residential structure and a point in time.<sup>44</sup>

The 1995 cut-off date came about as a result of a Shiv Sena-Bharatiya Janata Party (BJP) government coming into power in Maharashtra on the promise of providing four million slum-dwellers, who had been on the electoral role since January 1, 1995, with 800,000 free homes<sup>45</sup>. The original plan was to remove slums altogether through the provision of alternative housing. Although this promise was never fully delivered,<sup>46</sup> the cut-off date remained and crept into legislation. The 1995 cut-off is reflected in the 1971 Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act (“Slum Areas Act”)<sup>47</sup>. The Slum Areas Act provides for a Slum Rehabilitation Authority, which has as its primary task the provision of alternative housing to slum-dwellers who can prove residence in the city since before 1995. When this promise remained unfulfilled, the cut-off date was used as a method of delineating margins of access to the next best thing, namely public services such as water. The ambit of the cut-off date has since been extended even further to create a classification of many slum-dwellers as “illegal”.

#### D. Analysing disparities of access

So far, I have described how water is actually accessed by different residents within slums and the historical context of such access in Mumbai. Although the rule for accessing water does not differentiate between Muslims and Hindus, it becomes apparent that the rule creates space for interference by politically and financially motivated intermediaries, who do have incentives to differentiate based on religious identities. In what follows, I explore and analyse these differences in access based on religion. This section first looks at politics and the effect of Shiv Sena mediation in slums on civic participation. I then analyse the law, focusing both on how it creates space for the illegalisation of the slum and how the courts themselves have come to differentiate between classes of citizens and their entitlements to water. Finally, this section considers the notions of exclusion and belonging, by looking at segregation in slum geographies as well as the narratives of who belongs in the city.

42 Cited in: Murthy, note 40, p. 65.

43 Another method for accessing water is identified by Murthy through the provisions of the Slum Areas Act, by declaring certain slum-dwellers as “protected occupiers”. A full discussion of this is beyond the scope of this paper, but for more details see: Murthy, note 40.

44 This paper does not address the issue of the legal and ownership status of the residential property within the slum. For an account on legality and land use in Delhi, see: *Gautam Bhan, Amlanjyoti Goswami, and Aromar Revi, The Intent to Reside: Spatial Illegality, Inclusive Planning, and Urban Social Security*, in: Ministry of Housing and Urban Poverty Alleviation, Government of India (ed.), *Inclusive Urban Planning: State of the Urban Poor Report, 2013* Oxford.

45 Murthy, note 40, p. 66.

46 Only 127,000 slum homes were rehabilitated in 2010-2011 (*ibid.*).

47 Murthy, note 40, p. 65.

### *I. Exclusion from the public sphere and lack of legitimate mediators*

In an established and active democracy such as India, a voting ballot is a recognition of equality in the political field, allowing each citizen of India to have a say in how they are to be governed. One of the founding fathers of the Indian Constitution, B.R. Ambedkar recognized the inherent contradiction of the equal vote in India:

*“In politics we will be recognizing the principle of one man one vote and one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value.”<sup>48</sup>*

Ambedkar was deeply aware of how social and economic inequality contradicted formal political equality. Now, more than 60 years later, the ability to vote has not translated into equal and substantive participation in the public sphere. In the case of Mumbai slums, economic and social inequalities have led the poor to rely on networks which undermine their political agency and form an obstruction to forming meaningful political alliances and engagement.

The voting structures put in place by the Shiv Sena or the political process which mutes the Muslim leader's voice as described by Anand<sup>49</sup> are hardly evidence of politically reasoned debate. Having to vote for a party based on one's basic human need for water access does not sit comfortably with the idea of the vote as the exercise of a reasoned public opinion. However, this notion of the vote and its formation in civil society<sup>50</sup> may not provide a well-shaped frame to understand demands for water in the Indian slum<sup>51</sup>. Partly, this is because the realm of the slum is a fusion of identity politics, limited resources, pressing social and economic needs and deep-seated inequalities. This leaves little room to negotiate what counts as political and what does not.

It is, however, useful to consider the public sphere, or perhaps it is better to call it a less weighty “political space”, created in the context of the slum. As illustrated above, the Shiv Sena has occupied the role of a political intermediary for a large part of the Hindu slum-dwellers and removed the possibility for potentially powerful allegiances forming according to slum-dwellers’ collective material needs. The mediation or intrusion of the Shiv Sena in slum politics effectively distorts social memberships by dividing Muslims and Hindus on unsound and sectarian political calculations, designed to benefit the party itself. As Mar-

48 Bhimrao Ambedkar cited in: *Sunil Khilnani*, The Idea of India, New York 1999, p.15

49 Anand (2011), note 2, p. 556.

50 Jürgen Habermas, The Structural Transformation of the Public Sphere: an inquiry into a category of bourgeois society, Cambridge, Massachusetts 1989, p. 211-222.

51 E.g. Patrick Heller, Democracy, Participatory Politics and Development: Some Comparative Lessons from Brazil, India and South Africa. *Polity*, 44 (2012), p. 643-665.

garet Somers puts it, the “loss of demos” is compensated for “with an alternative of ethnos and nationalism”<sup>52</sup>.

Voting is no longer an exercise of self-governance properly understood. Instead, for Hindu slum-dwellers, the vote is a token exchanged with the Shiv Sena for a contractual promise for (a short-term) supply of municipal water. It is not the vote alone, as substantial amounts of money also change hands, as was described above. This contractualisation of citizenship is a strange outcome of the notion of equal citizens having equal votes.<sup>53</sup> If the vote is exchanged like money for access to water, it is no longer an exercise of citizenship itself. Furthermore, this usurping of the Hindu vote by the Shiv Sena leaves Muslims in an isolated minority position. Even though they are able to mobilize their vote politically and manage to have their voice represented on the municipal level, their voice remains unheard by the ruling majority.

In short, those who most urgently require political change are unable to affect it as the political resource of real citizenship and a meaningful vote is not available to them. As Jean Drèze explains:

*“Indian democracy is trapped in a vicious circle of exclusion and elitism. Because underprivileged sections of the population are excluded from active participation in democratic politics, their aspirations and priorities are not reflected in public policy. The elitist orientation of public policy, in turn, perpetuates the deprivations (poverty, hunger, illiteracy, discrimination, etc) that disempower people and prevent them from participating in democratic politics”*<sup>54</sup>

Slum-dwellers are constricted politically in a manner that limits their ability to inform policy and achieve meaningful change through the democratic process. Whereas many Hindus may be able to find short term solutions by relying on the Shiv Sena’s patronage, this system does not hold promise for sustained improvement and meaningful political participation. Muslims slum residents are worse off as their day to day needs for basic resources such as water are not met. In the absence of political recourse, one wonders whether real political action, such as grassroots political organization or mediation through legitimate non-governmental actors may provide a channel for achieving change.<sup>55</sup> As far as we see from Anand’s and Graham *et al*’s studies, the only mediators available to both Hindu and Muslim settlers are those who fall under the criteria of ‘water mafia’, engineers, municipal

52 Margaret R. Somers, *Genealogies of Citizenship: Markets, Statelessness, and the Right to have Rights*, Cambridge 2008, p. 119.

53 For a study on the contractualisation of citizenship in the US, see: Ibidem. Somers uses this concept to analyse privatization and marketization and their effect on citizenship in the US.

54 Jean Drèze, Democracy and Right to Food. *Economic and Political Weekly* (April 24, 2004), p. 1725.

55 On a case for successful NGO activism, see: Arjun Appadurai, *Deep Democracy: Urban Governmentality and the Horizon of Politics*, *Public Culture* 14 (2002), p. 21-47.

officials, police officers, local politicians and other middlemen<sup>56</sup>. The result is a slum community divided along religious differences as per a nationalist design.

## *II. Losing protection of the law*

### 1. The law as a lynchpin for illegalisation

Roy explains that in Indian cities, “the law itself is rendered open-ended and subject to multiple interpretations and interests, the ‘law as social process’ is as idiosyncratic and arbitrary as that which is illegal”<sup>57</sup>. Roy is writing in the context of urban planning in India, but this insight is equally useful here. As explained above, water does not always follow the course of legality. In what follows I discuss how the cut-off rule itself may be partly to blame for creating ambiguity and complex procedural requirements.

Unlike the South African Constitution,<sup>58</sup> the Indian Constitution does not contain an expressly enumerated right of access to water. However, the fundamental right to life contained in Article 21 of the Constitution of India<sup>59</sup> has been interpreted by the Supreme Court of India to include a right to shelter, including “water, electricity, sanitation and other civic amenities”<sup>60,61</sup>. Constitutional rights to shelter or water do not automatically transform into legal titles to land or entitlement to water. Rather constitutional rights are the reflection of the relationship between the state and the individuals within its territory. They set out certain responsibilities of the state towards individuals, as well as the individuals having some recourse against the state when such rights are not forthcoming. On the other hand, a legal right to land or water is better understood as a contractual or administrative entitlement. A contractual right to land or water would emerge from a private arrangement, such as a rental or purchase contract for a house or water tanks. An administrative right to land or water may arise as a result of a city housing or water supply scheme, where residents who fulfil certain requirements, which may include citizenship, residency, income or age, are entitled to public housing or water.

56 Anand (2011, 2012), note 2; Graham et al (2013), note 3.

57 *Ananya Roy*, Why India cannot plan its cities: Informality, Insurgence and the Idiom of Urbanization, Planning Theory, 8 (2009), p. 80.

58 Art 27(1) of the Constitution of South Africa provides: *Everyone has the right to have access to ... (b) sufficient food and water.*

59 Art 21 of the Constitution of India provides: *Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.*

60 *Chameli Singh and Others v State of UP and Others* 1996, 8.

61 Furthermore, in *Subhash Kumar v. State of Bihar*, (1991) SC 420, the Supreme Court of India held that “the right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.” Similarly, in *State of Karnataka v. State of Andhra Pradesh*, (2000) 9 SCC 572, the highest court held that “there is no dispute that under the constitutional scheme in our country right to water is a right to life and thus a fundamental right.” See also *Vrinda Narain*, Water as a Fundamental Right: A Perspective from India, *Vermont Law Review*, 34 (2010), p. 917-926.

The Maharashtra law which created the year 1995 (now extended to 2000) as the cut-off date for “legal” claims to water should be placed in the latter category of administrative law. Until recently, this law allowed many Mumbai residents to be left without municipal water access despite their constitutional right. In December 2014, in the case of *Pani Haq Samiti vs. Brihan Mumbai Municipal Corporation*, the Bombay High Court found that access to water for Mumbai residents could not be restricted based on a date. It confirmed the constitutional principle and held that even those living in illegal slum settlements from after 2000 “cannot be deprived of [their] fundamental right to food and water which is an integral part of the right to life guaranteed under Article 21...”<sup>62</sup>. However, the court clarified that someone who stays in an illegal structure could not claim water access on par with someone with a legal residence, and that it would remain up to the municipal authority to decide how water is to be supplied to illegal slum-dwellers and at what cost<sup>63</sup>. A deeper engagement with the constitutional principle remained lacking in the court’s judgment. For example, there was no discussion as to a minimum basic amount or quality, or the maximum cost at which water should be supplied by the BMC to all residents. The court’s analysis begs the question of how, when and why the right to water read under the constitution can be applied on inegalitarian terms. Does supplying unclean water, at irregular intervals and at a high cost to slum residents suffice to meet the state’s obligation? Or does the constitutional right to water demand effective action by the state? It remains to be seen how this judgment will be translated into reality.

The 1995 cut-off rule, which has now been extended to 2000, was based on an electoral discourse framed around slum rehabilitation<sup>64</sup> and not specifically reasoned ideas of justice or the rule of law. The rule regarding water supply to slums contained in the Water Charges Rules relies on a distinction between slum and non-slum areas. However, neither the Water Charges Rules nor the Mumbai Municipal Corporations Act which created them defines what is understood by “slum”. A definition for “Slum Areas” can be found under subsection 4(1) of the Slum Areas Act, and includes a wide ambit of understandings, including an area that may be “a source of danger to the health, safety or convenience of the public of that area or of its neighbourhood”, “inadequate or no basic amenities”, “squalid, overcrowded”, buildings used for human habitation which are “unfit for human habitation”<sup>65</sup>. The original definition of “slum” appears under section 3 of 1956 The Slum Areas (Improvement and Clearance) Act<sup>66</sup> of the central government. This definition is largely similar to that of the Mumbai Slum Areas Act, except that the original definition does not refer to “danger to the public” or neighbourhood. Both definitions form the basis for the relevant

62 *Pani Haq Samiti & Others. vs. Brihan Mumbai Municipal Corporation & Others.*, (15 December 2014, Bombay High Court), 11.

63 Ibid., 21.

64 Murthy, note 40.

65 Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act 1971, 4(1).

66 The Slum Areas (Improvement and Clearance) Act 1956.

authority declaring any area as a slum area for rehabilitation purposes. It is not clear whether the same definition is used by the BMC to provide water, since water access is not dependent on a declaration of an area as a “Slum Area” by the relevant authority, in this case, the Slum Rehabilitation Authority.

Aside from apparent arbitrariness in the choice of year, and imprecision in its understanding of a slum area, the 1995 rule linked water access firmly to a space. The extension of the cut-off date to 2000 does not change this. This administrative rule has the effect of moving away from the individual right to water interpreted under the constitutional right to life, to an entitlement based on a prior entitlement, that of shelter. It furthermore places a temporal limitation on what is a constitutional right to water.<sup>67</sup> These are some of the questions that the courts of law are yet to engage with.

Furthermore, the requirements for documents evidencing settlement and pre-1995 (now 2000) status produces a heavy procedural encumbrance. For those without documents to prove that they existed in the city before 1995 as well as those who have no home from before 1995, the 1995 cut-off produces a vicious cycle of “displacement - eviction - lack of entitlements and services”<sup>68</sup>. Many in slums do not have a legal address and in the absence of a legal address, legal documents are difficult to come by. As an answer to this problem, slum-dwellers in Mumbai may rely on neighbours’ testimonies<sup>69</sup> to build a legal history for themselves. Those whose neighbours are not willing to provide such testimony out of religious bias or fear of political backlash, as well as those who have neighbours who do not have sufficient political voice end up not being able to prove their legal existence.

Instead of receiving state protection as economically weaker segments of the population, the requirements imposed by the cut-off date allow for an emerging rhetoric of “illegal slums”, slum clearance and beautification<sup>70</sup>. This in turn creates space for state surveillance and police activity in slums<sup>71</sup>. These raids result in the extraction or destruction of water infrastructure in slums, arrests, prosecution of slum-dwellers for damage to public property and harassment of citizens for the purposes of obtaining information<sup>72</sup>. The raids appear to be conducted with a disregard as to the actual legal status of the connection, and many paid-for and legal connections are destroyed in the process<sup>73</sup>. Consistent with Anand’s findings in Premnagar, Graham *et al* observe Muslims being treated differently in their study. The

67 It is beyond the scope of this paper to consider whether the 1995 cut-off date limiting access to water is in fact constitutional. However, this remains a valid and unanswered question.

68 Bhan *et al.*, note 44, p. 88.

69 Appadurai, note 55, p. 36.

70 See: D. Asher Ghertner, Analysis of New Legal Discourse behind Delhi’s Slum Demolitions, Economic & Political Weekly 43 (2008), p. 59-66.

71 See Graham *et al* (2013), note 3.

72 Ibid..

73 Ibid., p. 128.

raids are a regular occurrence in Muslim Rafinagar and majority Muslim Shivaji Nagar<sup>74</sup>. NGOs working in the area suspect that “water raids in the area reflect the religious and ethnic biases of Mumbai’s municipal officials and the police”, reflecting the founding sentiments of the Shiv Sena<sup>75</sup>.

The cut-off date introduced into the water supply rules appears to sit at odds with the constitutional right to life, which has been read to include a right to water. Additionally, the cut-off date creates a lynchpin for the illegalisation of the slum. On the one hand, with the multifold requirements that come with its application, the law forces slum-dwellers to resort to informal channels and the “water mafia” to try and secure BMC connections. On the other hand, the law allows for criminalizing slums and their residents through the language of “encroachment” and “unauthorised occupation”<sup>76</sup>. In fact, the law serves to legitimize, what Charles Tilly recognized as “organized crime”<sup>77</sup>. In relation to slums, “the government has organized a protection racket”, where it “produces both the danger” (denial of access to water and criminal sanctions) and “at a price, the shield against it” (in the form of middlemen and ‘water mafia’)<sup>78</sup>.

## 2. The courts and classes of citizens

In *Janhit Manch vs State of Maharashtra*, a division bench of the Bombay High Court in 2006 held that the 1995 cut-off date could not be extended by the State. The appeal case is currently pending before the Supreme Court (however, as previously mentioned, the state government has still passed a bill extending the 1995 cut-off date to 2000). The case provides interesting insights into the perception of slum dwellers and the notion of the slum. The judgment states:

“Mumbai amongst the cities has a chronic shortage of open/recreation spaces and parks. ... Those who pay their taxes also have a right to life, including living in a clean environment and with proper infrastructural needs. Their rights cannot be defeated merely on the pretext of housing those who continuously continue to occupy public and private lands for residence or business inspite of the cut-off date.”<sup>79</sup>

The court is highlighting the importance of parks and recreational spaces over undesirable and illegal slums. Elsewhere in the judgment, the court found that,

<sup>74</sup> Ibid.

<sup>75</sup> Ibid..

<sup>76</sup> See Ghertner, note 70.

<sup>77</sup> Charles Tilly, War Making and State Making as Organized Crime, in: Peter B. Evans, Dietrich Rueschemeyer and Theda Skocpol (eds), *Bringing the State back*, Cambridge 1985.

<sup>78</sup> Ibid., p. 170.

<sup>79</sup> *Janhit Manch And Bhagvanji. vs. The State of Maharashtra*, (20 November 2006, Bombay High Court), paragraph 54.

*“further extending the cutoff [sic.] date of 1st January, 1995 is bound to affect the quality of life and living conditions of those who believe in the rule of law. Financial inability of the State to provide free housing to encroachers on public lands cannot be, by depriving the law abiding citizens, of their rights to a clean environment.”<sup>80</sup> [emphasis added].*

In the Bombay High Court’s reasoning, we discern a distinction between those who are “taxpayers”, “believe in the rule of law” and are “law abiding citizens” on the one hand, and those who are “law breakers” and “encroachers” on the other. Essentially the court found that the right to life of citizens, including the right to a clean environment with proper infrastructure is to be protected against the illegal, social needs of criminals.

In a similar vein of deciding on who is a citizen and who belongs, the court in *Janhit Manch* also cites the growing number of migrants in the city<sup>81</sup>. Mumbai is correctly identified as a key destination for job-seekers from around India. However, there is no reflection of the fact that using the term “migrant” in the context of the existence of slums may be misplaced, as some slum communities that still exist in Mumbai today first arrived as early as 1887<sup>82</sup>. The rhetoric employed by the court chimes with that of the Shiv Sena and mainstream public media in Mumbai, which increasingly project Muslims and poor migrants from outside of Maharashtra as a source of crime and social disorder<sup>83</sup>.

The thin description of slum-dwellers in the *Janhit Manch* case also allows the court to evade some key questions for the law: How does the right to shelter balance with an allegation of an illegal encroachment or trespass? Where does the right to water fit in with an accusation of criminal damage to public property when boring holes in public water pipes? How does the right to light and clean air of one group of citizens compare with the right to basic subsistence of the other? In its interpretation, the court did not see the slum-dwellers as citizens with their own rights to shelter and water, guaranteed under the Article 21 right to life. Even the existing entitlements under the 1995 cut-off rule were placed in the realm of a charity, wearing the “mantle of Robinhood [sic.]”, and appearing in the penumbra of a “social obligation” rather than right<sup>84</sup>. In the court’s interpretation, the law in this case operated to cleanly place slum-dwellers outside the realm of citizenship in the city and beyond its protection.

The more recent case of *Pani Haq Samiti* (2014) takes steps towards a more engaged understanding of what the slum is to the city of Mumbai, who slum dwellers are and how the courts of law ought to respond to them. In this case, the High Court ruled in favour of *Pani Haq Samiti*, an NGO which argued that access to water should not be restricted to

80 Ibid., paragraph 37.

81 Ibid., paragraph 54.

82 See *Jan Nijman*, A Study of Space in Mumbai’s Slums, *Tijdschrift voor Economische en Sociale Geografie*, 101 (2009), p. 8.

83 Graham et al (2013), note 3. p. 122.

84 *Janhit Manch*, note 79, paragraph 54.

those holding legal residential status. The court cited reports that showed that a significant number of Mumbai police constables lived in slums. It thereby attempted to create a thicker understanding of who a slum dweller is than the bench in *Janhit Manch*, which merely shrugged them off as criminals. However, the judges did not go so far as to engage with the constitutionality of the cut-off date itself. Rather, they reinforced the cut-off date by finding that those who live in “illegal settlements” can receive water in another form, i.e. not through pipes and the usual channels, and may be charged different rates.

It becomes apparent thus how the cut-off date, be it 1995 or 2000, creates a marker of differentiation between those who are full citizens of the city and those who are not. The rule also creates room for rent-seeking intermediaries to step into the process of gaining access to water. It further creates a rhetoric of illegality around the slum in the city, thereby removing slum residents from the protection of the law.

### *III. Exclusion and belonging*

#### 1. Territories of exclusion

Studies of the effects of Jim Crow laws in the United States show that where segregation led to distinct enclaves of African American settlements, the development of water and sewerage facilities lagged by 5-10 years<sup>85</sup>. Actual access to public services varied greatly between different American cities, with cities where African Americans and white Americans lived in close proximity to each other having better facilities for the former<sup>86</sup>. This was explained partly by the fact that it was practically difficult to grant access to certain homes but not others when they are situated closely together. In areas where homes were racially segregated, water and sewerage facilities were more likely to be provided where there was a fear of disease or epidemic spreading to white communities<sup>87</sup>.

In India, slums tend to form in clusters in different areas of the city. Smaller slums may be at the peripheries of a residential colony of apartment blocks or houses, or larger ones on the city periphery. Either way, slums and slum-dwellers become easily distinguishable, in large part due to their delineated territories. Similarly, within the slum, territories of exclusion exist between Muslim and Hindu areas. As Anand explains, Premnagar sits demarcated, on top of a hill with the majority Hindu slums sprawling around it. Even where the physical demarcation is not clear, the varying cultural practices of Hindus and Muslims, such as places of worship, religious rituals and attire may clearly give away whether an area is predominantly Muslim or Hindu.

<sup>85</sup> See for example: Werner Troesken, The Limits of Jim Crow: Race and the Provision of Water and Sewerage Services in American Cities, 1880-1925, *The Journal of Economic History*, 62 (2002), p. 734-772.

<sup>86</sup> Ibid..

<sup>87</sup> Ibid..

As a result of the geographical segregation, diseases and health risks resulting from inadequate water supply and sanitation that affect slum-dwellers do not endanger middle-class residents directly<sup>88</sup>, and similarly the “cesspool” of Rafinagar<sup>89</sup> can remain “safely” segregated away from Hindu settlements. The visual signals of slum versus non-slum, and Hindu versus Muslim are also important in a city like Mumbai. These signals together with the physical segregation make it easier for the BMC to not supply water to particular slum dwellings without affecting the supply to approved and planned residences. It also makes it easier for the BMC or “law enforcers” to conduct raids on “illegal connections” in selected Muslim neighbourhoods which may not benefit from the protection of *dadas* and other influential political intermediaries.

In Mumbai, slum-dwellers are often conceived of as not being part of the city at all<sup>90</sup>. The city is the malls, leisure centres, business districts where tax and rent-paying residents subside<sup>91</sup> together with expats who may or may not be citizens of India. The definition of a slum as a squalid, overcrowded place which poses a danger to the neighbourhood leaves to the imagination what a slum is. I did not and likewise many slum residents may not perceive of their home as fitting such a description at all. However, the fear of slums and encroachers directly informs the loss of quality of life of *proper citizens* of the city<sup>92</sup>. In this zero-sum-game set up, slum-dwellers are projected outside the geographical and visual range of the city. A further division exists within the slum between Hindus and Muslims. In this setting, lack of water access in slums is thus just one symptom of a deeper problem of segregation and “internal borders of social exclusion”<sup>93</sup> within the slum and the city.

## 2. Margins of belonging

The physical separation of Muslim areas from Hindu areas within the slum is spatial evidence of a divide in imaginations of belonging. To cite Edward Said:

*“A group of people living on a few acres of land will set up boundaries between their land... the territory beyond, which they will call ‘the land of the barbarians.’” This “imaginative geography of the ‘our land – barbarian land’ variety does not require that the barbarians acknowledge the distinction. It is enough for ‘us’ to set these boundaries in our own minds; ‘they’ become ‘they’ accordingly.”*<sup>94</sup>

88 Graham et al (2013), note 3, p. 122.

89 The Hindu, note 18.

90 Graham et al (2013), note 3, p. 116.

91 See Graham et al (2013), note 3, p. 117.

92 *Janhit Manch*, note 79.

93 Somers, note 52, p. 22.

94 Edward Said cited in: *Wendy Brown*, Walled States, Waning Sovereignty. New York 2010, p 74.

Graham *et al* describe how residents trying to carry water into the Muslim area of Rafinagar are harassed on the way by their neighbours from Hindu settlements<sup>95</sup>. In Premnagar, Muslim residents are identified by their Hindu neighbours as outsiders who do not belong. Anand's Hindu interviewee explains, “*Our people* are from the village. ... Meanwhile, *their people* are from outside”<sup>96</sup>. Hindu residents claim that the Muslims are dirty and unhelpful<sup>97</sup>.

Such language reflects a “conversion narrative”<sup>98</sup> as identified by Somers, where “responsibility and blame for social problems from structural conditions [are reassigned] to alleged defects of individual moral character, such as dependency, indolence, irresponsibility, lack of initiative, promiscuity, and parasitism on the body politic”<sup>99</sup>. All sorts of “bad” characteristics are projected upon the outsider who does not belong. In Mumbai slums, Muslims have come to occupy this space of the “other”. This rejection of Muslims as the “other” enables Hindu slum residents to draw boundaries between “us” and “them”, and deny access to a resource as essential as water to their neighbours.

In essence, the narrative produced by Hindu slum residents -- no doubt also as a result of a political discourse manipulated by the Shiv Sena -- is a deflection from more complex histories and systems that work to create exclusion. In India, the fabrication of Muslims as the “other” may be inevitable given the genealogy of the nation itself. The Muslim-Hindu division demarcated the territorial birth of Pakistan and India after colonial independence. Since then, the rise of the Hindu Right and the state support granted to the Hindu nationalist movement<sup>100</sup> has increasingly painted Muslims as the “other”. Citizenship is continuously regarded by the Hindu Right “as an exclusively cultural and religious enterprise, prioritizing religious identity”<sup>101</sup>.

Within this historical context, Anand<sup>102</sup> and Graham *et al*<sup>103</sup> have correctly identified Muslim slum residents of Mumbai as marginalised citizens of India. The antics of water access in Mumbai slums described above illustrate how Muslim slum residents in particular are not accepted as belonging to the city. Indian citizenship does not suffice to be included in a common political community by virtue of which political membership within Mumbai is granted. Within the city, which is their location for day-to-day civic participation and

95 Graham *et al*, note 3, p. 136.

96 Anand (2011), note 2, p. 555.

97 Anand (2011), note 2, p. 555.

98 Somers uses this in a different context of market forces and privatisation, but the term and its meaning is helpful in understanding the present context. See Somers, note 52, p. 3.

99 Somers, note 52, p. 3.

100 See, for example, commentary by Cossman and Kapur, note 31.

101 Ratna Kapur, *The Citizen and the Migrant: Postcolonial Anxieties, Law, and the Politics of Exclusion/Inclusion, Theoretical Inquiries in Law*, (2007), p. 545.

102 Anand (2012), note 2.

103 Graham *et al*, note 3.

state protection, Muslims are denied the legal and political protections normally granted by citizenship.

#### E. A Note on Citizenship

Anand uses the term “hydraulic citizenship”<sup>104</sup> to encapsulate the way in which slum-dwellers make claims to and access water in Mumbai. In a later paper he finds Muslim slum residents to be “abject” citizens<sup>105</sup>. Others have found slum-dwellers to be “invisible citizens”<sup>106</sup> and slum-citizenship to be a form of “insurgent citizenship”<sup>107</sup> or “anarchic citizenship”<sup>108</sup>. In formal terms at least, citizenship is a granting of equal status in the political sphere.<sup>109</sup> However, the way water is accessed in Mumbai demonstrates how such equality of status is not forthcoming. This section will draw on research from the US to reflect upon the notion of citizenship and the possibility of its loss.

To have a meaningful discussion about citizenship, there must first be some agreement as to what constitutes citizenship. Citizenship goes further than a legal document or the ability to vote in a particular nation-state. It is something fundamental and substantive, which really determines our place in the world. Relying on Earl Warren and Hannah Arendt<sup>110</sup>, Somers finds in citizenship a foundational right, one that gives rise to, or allows for the possibility of having a second set of rights.

Citizenship is thus the right to have rights<sup>111</sup>. This first right is an “existentially foundational right”<sup>112</sup>. For Somers, this first right includes legal or *de jure* rights to membership in a political community (a group, a city, a state, or indeed the human kind), but goes further to require an effective or *de facto* right to social inclusion and recognition as a moral equal in civil society. The latter is key, as “Due recognition is not just a courtesy but a vital human need”<sup>113</sup>. What Somers is essentially saying is that there is no citizenship without real belonging. One must be accepted as belonging as a moral equal within their political community in order to be a citizen. Only when this first set of foundational rights of belonging and recognition is forthcoming, can one enjoy the second bundle of rights, which include

104 Anand (2011), note 2.

105 Anand (2012), note 2.

106 Appadurai, note 55.

107 *James Holston and Teresa Caldeira*, Urban Peripheries and the Invention of Citizenship, Harvard Design Magazine 28 (2008), pp. 19-23.

108 *Benjamin Solomon*, Occupancy Urbanism: Radicalizing Politics and Economy beyond Policy and Programs, International Journal of Urban and Regional Research 32 (2008), pp. 719-729.

109 This guarantee puts into question the idea that adjectives can be placed in front of “citizenship” without challenging the concept itself.

110 Cited in: Somers, note 52, p. 5.

111 Somers, note 52.

112 Somers, note 52, p. 6.

113 Charles Taylor cited in Somers, note 52, p. 6.

civil, political, social and economic rights. The upshot is that only those who are included -- both legally and in practice -- in a political community can make rights claims.

Somers' argument in *Genealogies of Citizenship*, revolves around the marketization and contractualisation of citizenship in America. She argues that the growing power and moral authority of the market has removed social inclusion and moral worth from the sphere of inherent rights to an earned privilege, which is conditional upon the ability to exchange something of equal value<sup>114</sup>. The historical inequalities posed by race or gender are exacerbated by the market. The result is an ever increasing, "superfluous" population who cannot offer the required market value and remain socially excluded from America. There are *internal borders*, writes Somers, which lead to the exclusion of a growing number of Americans, leaving them "internally stateless" as they have lost the right to have rights<sup>115</sup>.

This paper does not look at the marketization or contractualisation of Indian society or the city of Mumbai when analysing access to water in Mumbai slums. However, Somers' findings raise important questions for citizenship in Mumbai. Who has power in the public sphere? Who is becoming superfluous and effectively internally stateless? The systematic efforts to exclude Muslims from slum and the city in Mumbai appear to be effectively a collective achievement in denying them of their citizenship. The socio-economic right to water is only being granted to those who are seen to be part of the political community. In fact, the denial of water access to Premnagar or Rafinagar Muslims can only be understood in this way, for even criminals are given food and water under legitimate state custody.

Lack of access to water then becomes a physical manifestation of grievous political denial. The response of Premnagar and Rafinagar residents of boring wells and turning to nature is remarkable both in real and symbolic terms. Modern urbanity in all its progress has no problem in drawing a sharp delineation to deny water -- or life -- to those that do not belong in its political community. The demarcation does not stop there, as those who do not belong are pushed to the underbelly of the city, and forced -- apocalyptically for them -- to subterranean forms of life.

It is worth considering whether what we see in Mumbai slums goes further than just marginalised citizenship. Viewed through Margaret Somers' lens, are the methods of accessing water for Premnagar and Rafinagar residents evidence of a return to nature as a consequence of a denial of citizenship? Is what is happening to Muslims in Mumbai slums in fact the result of "effective statelessness"? To answer these questions is beyond the scope of this paper, but I leave the reader with some thoughts in this direction.

#### F. Concluding remarks

The Mumbai slum puts to test the notion of legality and illegality, coming out as a grey space conducted by its own special set of rules. It is in fact a historical discourse of belong-

114 Somers, note 52, p. 3.

115 Ibid..

ing and the political landscape of the city which determines who receives municipal water connections and who does not. The Shiv Sena and its representatives continue to demarcate the Mumbai slum along religious lines which is reflected in uneven water supply between Hindu and Muslim slum residents. The city geography is divided along these religious and class differences. In this setting, the 1995 cut-off rule has served to create room for further exclusion and political mediation. The courts of law continue to uphold and reinforce a rule that is arbitrary and *per se* unenforceable in the slum context. Often those who have lived in the city for much longer fail to meet the administrative requirements to be able to reap its alleged benefits, such as access to water, whereas newer or wealthier inhabitants may mobilise political resources to achieve such access. For all these reasons, Muslim residents of slums in Mumbai may not be able to access water regardless of whether their constitution or an administrative rule grants them this access.

This paper demonstrates how law, politics and even physical space can be aligned in a manner which systematically refuses access to a particular minority group. It appears then that the problem of access to water is actually a problem of social and political exclusion, as aided by the law. With fewer financial and political means, and without the protection of the law, the residents of Premnagar and Rafinagar have slowly become disconnected from their rights. Seen in this manner, it ceases to matter whether we compartmentalise access to water as a (human) right, a public good, or an access to justice issue. Given the way the Mumbai slum works, it appears that water will only flow to those who are seen to be part of this urban nation by their political community.

I do not wish to end on a bleak note. One place to look for solutions is social action and political mobilization. It appears from Anand's study that the residents of Premnagar have had some small successes, such as political representation in the local council. Although as a minority they were not able to effect change, representation matters as a prerequisite of recognition. The greater involvement of mediators, be they journalists, activists, or academics who operate free from the rhetoric of nationalism may lead to a change in the discourse. Immediate access to water is necessary for individual survival, but the responsibility does not stop there. An effort is required to change the discourse that paints Muslims as "dirty", "outsiders", "criminals" and "encroachers". These are imposed labels that fail to recognise their politics and their person. The solution to the problem of exclusion or internal statelessness requires a structural shift in imaginations to include Muslims within the urban nation. Although my focus here has been on a group of Muslim residents in Mumbai's slums, the problem of exclusion, perhaps even the "internal stateless"<sup>116</sup>, is as much a concern for other dispossessed people such as the Roma in Europe, the Rohingya in Myanmar, or the homeless in New York. In the end, exclusion is not just a(nother) Hindu - Muslim problem, it is really a threat to every minority in any imagined political community.

116 Somers, note 52.