

Divided Cities Cannot be Smart Cities

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Aerial view of Mumbai (Photo- Hishamudeen, CC).

Go to any popular real estate website in India, and search for the term ‘Hindu locality’. Hundreds of listings show up, as they do for ‘Muslim locality’ and ‘Jain locality’. Searching for caste specifications throws up only fewer results – while some listings explicitly do say ‘brahmins only’, the more common requirement is ‘no non-vegetarians’, which is usually a codeword for ‘no Muslims’. The similarity, in this regard, with matrimonial websites makes it clear that our specifications about who we live next to are as narrowly defined as about who we marry.

While the government promises to soon unveil plans for 500 [smart cities](#), a crisis in urban housing in India looms large. Although 1.37 crore households living in urban India live in slums and lack proper housing, it is not for lack of supply – 1.2 crore units of housing, mostly in the luxury market have been constructed and are presently lying [vacant](#). This speaks of a larger dysfunction in official policy towards affordable housing for all.

While discriminatory attitudes are familiar and all-pervasive, they are also particularly insidious. That is why, when blatantly egregious examples surface, they lead to furious calls for action. A young Mumbai woman, [Misbah Qadri was evicted](#) from a Wadala flat last week and was told that it was because she was Muslim. Whatever the merits of her case, the fact remains that housing discrimination against Muslims is [common in India’s major cities](#). The question that this throws open is simply this – does the Indian state have a Constitutional duty to prevent private individuals from discriminating on the basis of what are called ‘protected characteristics’, like race, religion, gender and caste, that the state itself is not permitted to discriminate on? Or does the freedom of contract and association mean that the state cannot place limitations on who a person chooses to rent her house to?



Misbah Qadri, who says she was denied occupation of a flat in Mumbai's Sanghvi Heights society just for being Muslim. PTI Photo.

There are extensive limitations on the freedom of contract in India. Article 15(2) of the Constitution prohibits any shop, restaurant, hotel or entertainment venue from denying access to any citizen on the basis of the protected characteristics. It makes no difference whether the shop or hotel is owned by private parties – it is still bound by Article 15. The Equal Remuneration Act, 1976, prevents any employer from paying less money for similar work on the basis of the protected characteristic of gender. The Indian Contract Act, more generally, voids contracts that are opposed to public policy.

Many, however, will point out the 2005 Supreme Court judgment in *Zoroastrian Housing Cooperative Society Ltd v District Registrar, Coop. Societies (Urban)* as a possible obstacle in prohibiting such housing discrimination. In it, the Supreme Court upheld a bye-law of the Zoroastrian Cooperative Housing Society which limited membership of the society to Parsis. The Court held that members of the society had the right to associate with whoever it chose, and its bye-laws limiting membership on the grounds of religion were not opposed to public policy.

The American experience

A country that believes in the sanctity of private contract far more than we do, however, has come to the opposite conclusion.

In 1948, the United States Supreme Court in *Shelley v. Kraemer* refused to enforce a contract that prohibited property from being occupied by non-Caucasians. Today, the US Fair Housing Act makes it illegal to refuse to sell, rent to, or negotiate with any person because of that person's inclusion in a protected class. This is in recognition of the fact that housing contracts represent more than purely private agreements between parties – when coupled with

widespread discriminatory attitudes, they lead to segregated societies and deepening inequality.

Arguments can, and have, been made, against the reasoning the Supreme Court applied in *Zoroastrian Cooperative*. It misapplied the notion of ‘public policy’, reading it as the policy framed by the parent statute, not as wider public policy. However, a more comprehensive approach, and one that the court itself endorses, would be through a legislative, rather than a judicial intervention.

The reason why legislative intervention, as opposed to judicial, is necessary to resolve the matter of housing discrimination is because the problem should not be exclusively framed in the narrow context of individual acts of discrimination. Ghettos in cities do not rise spontaneously or accidentally. Ghettos are created by bad housing policy coupled with prejudice.

Time to make discrimination illegal

The American experience with major cities serves as a cautionary tale. Specific judicial interventions help but in the absence of a coherent legislative framework, they will be haphazard and unhelpful. Or plain regressive, as the Supreme Court judgment in *Zoroastrian Society* turned out to be. We not only need a pronouncement that individual discrimination in housing is wrong, but also need to think through methods of redress that are effective in the Indian context of overburdened courts and delayed justice.

What is required are concerted efforts at the Central, state and municipality level to address the problems of housing in urban India.

The Centre could lay down a broad model law on non-discriminatory access to housing which has to be adopted by each state which accepts funds under a Central scheme relating to urban renewal, such as the Jawaharlal Nehru National Urban Renewal Mission (JNNURM). Such a law, while laying down the parameters of what amounts to non-discriminatory access to housing, also should empower the municipality to take the necessary measures to ensure availability of affordable housing to all sections of society proactively.

The law must also prescribe that any housing society which restricts or refuses membership or refuses to rent property on the basis of religion or any protected characteristic must face consequences under law. This merely takes forward the endeavour started by the framers of the Constitution who, when debating these anti-discriminatory laws, spoke of the need to eradicate the discrimination “being made between man and man.”

India is undergoing a great movement of persons from rural to urban areas. This is a movement which must be encouraged – cities are the future in sustainable living and economic growth in a nation. In the Indian context, the rural to urban movement is also spurred by the lack of opportunities and the oppressive nature of life in caste-bound villages. What Ambedkar said of villages being a “cesspool” and “a den of ignorance, narrow-

mindedness and communalism” still largely holds true. When a vast section of population has sought to make this move to avoid the problems rural India, it would be an utter travesty if they were faced with a ‘modern’ version of the same ignorance, narrow-mindedness and communalism in urban India as well, thanks to poor housing policy. And prejudice, that the Indian state ends up sanctioning by its refusal to act.

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