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*From Housing to City: Analysing the recognition of the Right to the City in South Africa and India*

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Observing on the crisis of urban homelessness, the Supreme Court of India noted that ‘destitute in urban areas continue to suffer without shelters.’ Further, ‘[in spite] of the availability of funds and a clear mechanism through which to disburse them, we see an extremely unsatisfactory state of affairs on the ground.’ This is despite the ‘continuous monitoring of the matter’ by the court itself.[[2]](#footnote-2) The court went on to constitute a committee to provide recommendations to the central and state governments to ensure at least temporary shelters for urban homeless. The 2011 Census puts the number of homeless people to 1.77 million people,[[3]](#footnote-3) the civil society experts believe that even this is a gross underestimation and peg the number at around 3 million.[[4]](#footnote-4) It was reported that in 2017 over 1600 people died in India due to extreme weather conditions.[[5]](#footnote-5) They live not in ‘buildings or census houses’ but ‘in the open on roadside, pavements, in Hume pipes, under flyovers and staircases, or in the open in places of worship, mandaps, railway platforms, etc.’[[6]](#footnote-6)

Unlike India, South Africa provides a constitutional guarantee in the form of “right to access to adequate housing.”[[7]](#footnote-7) Yet, “the country” as the South African Human Rights Commission notes, “continues to face significant challenges in providing access to adequate housing to poor and vulnerable persons.”[[8]](#footnote-8) The Census data suggests that even though the percentage of people under ‘informal dwelling’ has declined over time, the absolute number has increased and stands in excess of 2 million.[[9]](#footnote-9) Much like the Indian Supreme Court, the commission laments that existing policies fails to adequately address the concerns of variety of people although “mechanisms are available for ensuring that even the most destitute of individuals are accommodated, their needs are not adequately addressed.”[[10]](#footnote-10) While homelessness is a critical concern, Berger invites our attention to a much more wide-spread phenomenon, he calls ‘housing indigency’ which underlines grossly unmet housing needs.[[11]](#footnote-11)

Homelessness and housing indigency makes people vulnerable not only to the elements of nature, they are also susceptible to health and nutrition risks.[[12]](#footnote-12) Importantly, they are powerless, in the sense that they lack power even in the mediated sense. They can only be decision taker and have no real voice in the politics that determines their destinies.[[13]](#footnote-13) The political-economic processes have influenced the consumption patterns accompanied with a burgeoning consumption-oriented middle class that renders the homeless and malnourished invisible to the current political and cultural narrative. This ‘politics of forgetting’ is then manifested in laws that prohibit beggary, squatting and panning along with city zones that would spatially reorganize a city to push the destitute away to the periphery of the city.[[14]](#footnote-14) Interestingly, the SAHRC notes that the emphasis on the ‘world class city’ narrative resulted in preference for private investments in the land situated close to the economic hub over the needs of the poor thus shifting them to the outskirts of the city removed from access to economic opportunities.[[15]](#footnote-15) Almost simultaneously, in India, the narrative of ‘smart city’ is being canvassed, that also seeks foreign and private investments. What it does to its impoverished masses is a question that needs deliberation.

This makes the claim of homeless people not only a redistributive demand for shelter but alongside it an important recognition-based claim for citizenship. This informs the motivation of this paper to situate right to housing as an integral component of a more comprehensive the ‘right to the city.’

Before embarking on the housing rights jurisprudence laid down by the respective apex courts of India and South Africa, the following section shall briefly explain the right to the city and its relationship with right to adequate housing. This is not to say that right to housing on its own is devoid of content, quite to the contrary, in fact. Once the conceptual matrix is laid out, the paper examines the housing rights jurisprudence of these countries to examine if (and how) they engage with the right to the city.

**The Right to the City**

David Harvey, poignantly notes, “The Right to the City is far more than the individual liberty to access urban resources: it is a right to change ourselves by changing the city. It is, moreover, a common rather than an individual right since this transformation inevitably depends upon the exercise of collective power to reshape the process of urbanization. The freedom to make and remake our cities and ourselves is … one of the most precious yet most neglected of our human rights.”[[16]](#footnote-16) It suggests two possible conceptions of this right. The incremental approach would suggest that the right to the city is essentially a bundle of rights to access various amenities and resources a city has to offer, while a transformative right that Harvey defends makes it a more existential and a citizenship based claim (not discounting the right to access various facilities). Succinctly put, the incremental approach defines it as a collection of rights *in* the city. Whereas, the transformative conception considers this right to be larger than the sum of its parts.[[17]](#footnote-17) Further, this right combines legal and moral, formal and substantive, and individual and collective rights. This makes the right to the city as complex as chaotic. This makes it a challenge for constitution framers, legislators and policy makers to lay out a definitive content of this right. Another way to look at it is that both incremental and transformative approaches are complimentary and sides of the same coin.[[18]](#footnote-18) The transformative agenda appeals to social and political movements from the below while the incremental approach considers institutional improvements. Their complimentarity suggests that both could in a way be seen as mutually reinforcing. Where do poor and disenfranchised locate themselves in our cities? The cases of evictions and squatting could at once be seen as struggle for survival and a claim for citizenship.

While Lefebvre saw industrialization and advent of capitalism as a point of departure in the analysis of cityscape,[[19]](#footnote-19) the more recent philosophers credit the rise of global capitalism and emerging discourses on modern, clean and smart cities.[[20]](#footnote-20) The turn from cities as understood from the ‘use value’ to the instruments of ‘exchange value’ heralded by industrialization[[21]](#footnote-21) finds impetus in the rise of global capitalism. Harvey notes in the context of American sub-urbanisation that this shift not only led to creation of new infrastructure, but also effected a radical transformation in lifestyles and a strong affinity for property rights.[[22]](#footnote-22) He notes that Lefebvre predicted that not only urbanization was central to the survival of capitalism, it also obliterated the distinctions between country side and towns.[[23]](#footnote-23) Illustrating the material social change that urbanization brought, Alan Mabin notes, for example, that “[the] pressures of land loss, military exigency and a growing commercialization of exchange relationships rendered both individuals and whole communities susceptible to involvement in the growing wage-labour economy of the towns by the 1850s.”[[24]](#footnote-24) Further, as the imperial state expanded, most people were deprived of independent control of what they saw as their land, even as they lived there, as they inevitably sent one or more of their family members to participate in the urban economy.[[25]](#footnote-25) The land was divided into reserved and non-reserved land saw African population falling through the crevice and settle as squatters or tenants mostly in non-reserved parts but also in the reserved areas.[[26]](#footnote-26) Modernity brought ‘betterment’ of agricultural communities and exclusivity which created a large landless population which inevitably stayed in miserable settlements and sent their members to take part in again in urban economy.[[27]](#footnote-27) The inadequate urban policy and unfulfilled promise of housing armed with apartheid ideology resulted in mass and brutal evictions and racialized zoning. These overcrowded settlements suffered from shortage of resources, denial of access to healthcare and widespread unemployment.[[28]](#footnote-28) This was followed by laws such as Prevention of Illegal Squatting Act which made their very existence of African landless population a crime. This prompts, perhaps, Dhiru Soni to say that “[the] housing question in South Africa, especially for blacks, pervades their very existence: who they are, what they are, and where they stay.”[[29]](#footnote-29) Further, he says, “Housing, therefore, becomes an indicator and a potent symbol of the shifting power relations between classes and within different sectors of capital.”[[30]](#footnote-30)

The Indian cities historically had been segregated along the lines of caste and religion which were reinforced by colonialism.[[31]](#footnote-31) Despite being seen as emancipatory spaces of opportunities for Dalits having recorded over 40% increase in their influx,[[32]](#footnote-32) the urban localities tend to arrange themselves according to caste and religious lines. Jodhka, in his field study on Dalit entrepreneurship notes that since most of them started with limited means, they ran small grocery shops which were located in Dalit residential areas. Worse, since people in town knew about their Dalit origin, they were unwilling to provide them a space in their shops for rent, despite the constitutional promise of abolition of untouchability.[[33]](#footnote-33) In fact, a relatively recent study shows that identity based spatial exclusion is still rampant even in the big Indian cities.[[34]](#footnote-34) The trends of rising spatial exclusion is not limited to caste but also relates to religious minorities, particularly Muslims, in medium to large cities saddled with histories of communalism.[[35]](#footnote-35) It has been argued that unequal distribution of housing, transport, water, sewage and such amenities necessary to access city is not residual but purposefully produced through state actions.[[36]](#footnote-36) Heller and Mukopadhyay, list out ten clear state actions ranging from deliberate under-planning of residential spaces thereby creating extreme dependence for local political power-wielders. As a result, provision of basic housing and attached amenities to access the city is ad-hoc and subject to significant transaction costs. The public investments at the cost of demolition of several such unauthorized colonies often benefit the richer population through investment in specific transportation accompanied with the neglect of others.[[37]](#footnote-37) Thus, “the state first crafts a legal and regulatory framework to impact the poor disproportionately; it then builds on this framework to restrict quality service delivery to a small group of citizens and finally, it perpetuates these differences by making investments that primarily benefit the better-off.”[[38]](#footnote-38) The authors reflect that not only this represents a denial of basic human capabilities, the negotiated existence has a deleterious effect on local democracy and the gross spatial inequality in delivery of basic entitlements may possible cause the excluded settlements to harden into ghettos.[[39]](#footnote-39)

**Right to Housing and the City**

Clearly, for the underserved population even the incremental notion of the Right to the City is a far cry. However, we need not abandon the transformative core of the slogan. At the least, it could be a powerful political tool to mobilise people and demand institutional action,[[40]](#footnote-40) yet working out legal content of this right is critical if the cities were to hold their promise of emancipatory zone for fuller expression of citizenship[[41]](#footnote-41) and what it means to really *inhabit* a city.[[42]](#footnote-42) There are a few takeaways from the above discussion for an initial legal content of this right. *First*, civil and political rights are indivisible. *Second*, the individual and collective rights must be understood as inter-dependent instead of distinct and independent. *Third*, these rights should be interpreted purposively in an integrated way rather than severally. Before moving to the constitutional scheme and jurisprudence evolved by the constitutional courts of the two countries, it would be useful to mention that while the right to city is not exhausted by right to housing, the latter is central to it. It includes citizen participation, freedom of movement across the city, preservation of urban commons, public transport and a sense of agency that legal system and social conventions guarantee a citizen when she is considered entitled to equal concern and respect.[[43]](#footnote-43)

Insofar as housing rights are concerned, the right to city dimension would include questions like affordability in the context of finance deployed as proportion of income and debt towards housing,[[44]](#footnote-44) public participation in urban governance including questions of settlement and displacement,[[45]](#footnote-45) barriers to access and mobility, non-discrimination in housing and access to amenities and transport, among other things. Importantly, this does not undermine the centrality of right to housing for the enjoyment of all economic, social and cultural rights.[[46]](#footnote-46)

The General Comment No. 4 explains the content of right to housing and gave it a wider meaning than merely shelter to include “the right to live somewhere in secure, peace and dignity.’[[47]](#footnote-47) In spite of the inherent contextuality of ‘adequate housing’, the Committee on Economic Social and Cultural Rights established certain baseline factors[[48]](#footnote-48) in the General Comment. These factors include: legal security of tenure; availability of infrastructure and amenities; affordability; habitability[[49]](#footnote-49); accessibility (particularly from the standpoint of disadvantaged groups); location:[[50]](#footnote-50) and cultural adequacy.[[51]](#footnote-51) The Comment also underlines that housing rights should not be seen in isolation from other civil-political (alluding to principles of non-discrimination and dignity) and socio-economic rights. Even as this right is to be progressively realised, the Comment enjoins the state parties to ensure that certain provisions are immediately secured (particularly that which requires abstention on the part of the state and allowing for self-help practices among people).[[52]](#footnote-52) While there is some acknowledgement that housing forms an important part of a cluster of other human rights, some of which may pertain to the right to city, the General Comment makes no mention of the need for public participation in urban governance that entails decisions on housing policy and planning. The approach continues to be state-centric, even if it briefly mentions ‘duty of avoidance’.

**Constitutional scheme and Jurisprudence**

South African constitution explicitly guarantees its citizens the right to access adequate housing. It reinforces indivisibility of human rights by enumerating both civil-political as well socio-economic rights under the ‘Bill of Rights’.The text of the Indian Constitution on the other hand largely recognizes civil-political as fundamental rights[[53]](#footnote-53) and socio-economic rights are designated as non-justiciable directive principles of state policy.[[54]](#footnote-54) Yet, particularly after 1978, the judiciary led by the Supreme Court democratized the access to judicial process by relaxing rules of *locus standi* in public interest litigations. Thereafter, it provided liberal as well as an integrated interpretation to fundamental rights provisions to strengthen non-discrimination and affirmative action on the one hand, and include socio-economic rights to enrich ‘right to life’ under Article 21 on the other.[[55]](#footnote-55) In *Francis Coraile Mullin*, Bhagwati J. famously observed:[[56]](#footnote-56)

“[The] right to life enshrined in Article 21 cannot be restricted to mere animal existence… We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings.”

The Supreme Court has interpreted right to shelter and livelihood,[[57]](#footnote-57) elementary education, health, food, clean environment and access to justice within the meaning of right to life. It has also held the harmony between directive principles and fundamental rights as part of unalterable basic structure of the Constitution.[[58]](#footnote-58) In *Olga Tellis* the court recognized the linkage between the right to shelter and livelihood of slum and pavement dwellers sought to be evicted by the municipal corporation. It directed the corporation to allow them to stay in their dwellings till the end of the monsoon season. The bulwark that this case offers is right not to be evicted summarily and a legitimate claim for resettlement.[[59]](#footnote-59) Interestingly, the petitioners had adduced evidence to established that the burgeoning slums and pavement dwelling in Mumbai is a direct result of unplanned urbanization and state complicity. Unfortunately, *Olga Tellis* offers a rather limited scaffolding to the right to housing and could instead be used to justify eviction with only customary hearing. Yet, by linking livelihood and shelter, the judgment offers some promise.

Contrastingly, besides the text, the judicial opinions by the Constitutional Court of South Africa seems to offer better protection. The *Grootboom* case noted that the cause of unmet housing needs that compelled people to occupy lands, lay in apartheid regime. Noting the complicity, the court noted that State presided over an ‘apartheid cycle’ which “was one of untenable restrictions on the movement of African people into urban areas, the inexorable tide of the rural poor to the cities, inadequate housing, resultant overcrowding, mushrooming squatter settlements, constant harassment by officials and intermittent forced removals.”[[60]](#footnote-60) Inevitably, people were compelled to live in encroached land and in appalling conditions and even the post-apartheid state had failed to provide them housing despite standing in waitlist for seven years!

*Grootboom* was significant from the norm-making perspective. It reinforced the indivisibility and inter-relatedness of rights and lays down a combination of textual and contextual interpretation. It explains the test of reasonableness to evaluate the validity of state action for which “housing problems [should be considered] in their social, economic and historical context and to consider the capacity of institutions responsible for implementing the programme.”[[61]](#footnote-61) The court then went on to analyse the housing policy from reasonableness perspective. It declared the policy inadequate because “no provision was made for relief to the categories of people in desperate need”[[62]](#footnote-62) even if they were provided with temporary arrangement to begin with. Further, it emphasized a humane approach to eviction, particularly of people with desperate needs, suggesting that the provisions must be interpreted keeping the ideals of equality and human dignity in the sight.[[63]](#footnote-63) In the case of occupation, reasonable balance needs to be struck between property rights and right to adequate housing.[[64]](#footnote-64) In the case of *Port Elizabeth Municipality* the court said that the motivation of the occupiers (whether they intended to jump the queue), the duration for which they had been staying and existence of alternative arrangements should be considered before passing eviction orders. Accordingly, it called for courts to be “far more cautious in evicting well-settled families with strong local ties, than persons who have recently moved on to land and erected their shelters there.”[[65]](#footnote-65) Importantly, the court observed that the spirit of ‘ubuntu’, which combines individual rights with a communitarian philosophy, suffuses the constitutional order and the formal structures of law should be infused with grace and compassion. The court, having noted that the owner did not need land for any immediate productive use and the Municipality having failed to meaningfully engage[[66]](#footnote-66) with the occupiers before deciding to evict them, declined to pass eviction orders. Further, people must not be punished for not complying with eviction order unless it is a judicial one too.[[67]](#footnote-67) The rule of meaningful engagement preceding any eviction laid down in *Olivia Road* has been upheld in more recent judgments too.[[68]](#footnote-68)

Drawing on the histories of dispossession and confinement in colonial and apartheid regimes, the Court linked the legal security of tenure that allows dwelling for one who may not own that land, with the basic human dignity.[[69]](#footnote-69) The historical context informed the purposive interpretation of Extension of Security of Tenure Act to rule that an occupier has the right to carry out necessary improvements to make the shelter habitable.[[70]](#footnote-70) Diluting the centrality of private property,[[71]](#footnote-71) the court is empowered to impose positive obligations on a private person vis-à-vis the occupier considering the nature, history and purpose of the right, and potential invasion or negation of right a hands-off approach may cause.[[72]](#footnote-72) The court delineates the nature of positive obligation in *Mazibuko*. Reading the right and obligations together, it observed “it is clear that the right does not require the State upon demand to provide every person with sufficient water without more; rather it requires the State to take reasonable legislative and other measures progressively to realise the achievement of the right of access to sufficient water, within available resources.”[[73]](#footnote-73) The court suggested that a meaningful engagement could help balance the owner’s rights over the property and those of the occupier. When the *Blue Moonlight* applicants were relocated in ‘managed care’ Shelters, not only was *Blue Moonlight* itself clarified[[74]](#footnote-74) but it went further from usual issues of infrastructure, tenure and habitability. It struck down the lockout and family separation rules of the dormitory providing temporary housing. The former which forced people to remain away during daylight and the latter which forbade residing with a family member of opposite sex violated cultural adequacy[[75]](#footnote-75) and tenets of human dignity enshrined in the Constitution.

*India*

The absence of a dedicated constitutional provision and moreover a National-level framework law effectuating housing rights have been a matter of worry.[[76]](#footnote-76) The UPR Review noted that national urban housing shortage is projected to increase to 34 million units in 2011. It notes policy failures in ensuring security of tenure, proper resettlement, prevention from forced eviction and coping with frequently occurring disasters.[[77]](#footnote-77) The review noted with concern that housing deficits need to be tackled at structural level and the ‘smart cities’ project should not result in forced evictions and segregation.[[78]](#footnote-78) Yet, a report notes that in the year 2017, government authorities have demolished over 53700 homes and thereby forcibly evicting around 260000 people for reasons like ‘city beautification’ , ‘slum-free city’, organizing mega-events, ‘development’ projects.[[79]](#footnote-79) The report notes that in most cases, “the state has not provided resettlement; where provided, resettlement is largely inadequate. Forced evictions are thus contributing to a rise in homelessness.”[[80]](#footnote-80)

The Slum Areas (Improvement and Clearance) Act, 1956 provides wide discretion to the government for declaring an area as ‘slum’ and ordering its clearance.[[81]](#footnote-81) Different state governments their respective slum-clearance laws with contextual modifications. For example, Maharashtra legislation[[82]](#footnote-82) establishes Slum Rehabilitation Authority.[[83]](#footnote-83) Yet, given the housing indigency widespread in the State, the efficacy of the institutions is question-begging.[[84]](#footnote-84) Indeed, in a recent judgment[[85]](#footnote-85) the Supreme Court noted the plight of 800 slum dwellers in Santa Cruz (Mumbai). They were incidentally the owners of their land who had been embroiled in litigation among the builders and authorities over building contract. Due to this they had been denied a more permanent housing on their land for over three decades. While the court directed the authority to streamline its future projects and complete this work in a time-based manner, the slum dwellers even though made part of consultation had limited agency inasmuch as they would only be offered limited plans to choose from rather than participating in planning itself.[[86]](#footnote-86)

While right to housing and shelter had been read as integral to a life with dignity and hence part of Article 21,[[87]](#footnote-87) in *Chameli Singh* the court emphasized on habitability:[[88]](#footnote-88)

*“Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation.”*

In *Chameli Singh*, the impugned land was sought to be acquired for providing housing for Dalits. The court noted the historical reasons explaining the urgency of providing houses to Dalits. The court drew nexus between housing, dignity and personhood[[89]](#footnote-89) in this case.

**CONCLUSION**

The limited sample of judgments show some minor traces of an aspiration for a right to city, whether in the form of demands of the pavement or slum dwellers to either stay in the city or to be relocated in neighbourhood with adequate amenities and connection with their livelihoods. However, we are far from anchoring right to city in the right to housing. Predominantly, the concerns around housing have largely to do with infrastructure and habitability. Next, the courts have been concerned about the access to amenities to make the right meaningful. The Constitutional Court of South Africa has laid down some conditions for ‘meaningful engagement’ that ensures reasonable participation of the slum dwellers in their relocation or rehabilitation plans. It provides at least a modicum of agency that forms the core of a larger right to city. In India, this agency seems to have been diluted by the law itself that provides wide executive discretion and the litigation that calculated to deny benefits to the inhabitants. South African constitutional court had been relatively sensitive about the rights of the occupiers as opposed to their subordinate courts. The Indian judiciary has also left much to be desired in terms of protecting the rights of the vulnerable sections of indigent and migrant population that lives in the inadequate housing.

Further, the typical calls of beautiful city or slum-free or modern cities have turned out to be brutally exclusionary projects that have not only reduced the use value of city to exchange value, but severely limited the access to an urban life and its opportunities for impoverished people who literally fight for their location in the wider socio-economic structure.

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2. E.R. Kumar v. Union of India, W.P. (Civil) no. 55/2003 (Judgment delivered on 11 November 2016). [↑](#footnote-ref-2)
3. <http://www.censusindia.gov.in/2011census/hh-series/hh02.html> (last visited on, 10 July 2018) [↑](#footnote-ref-3)
4. <http://hlrn.org.in/homelessness> (last visited on, 10 July 2018) [↑](#footnote-ref-4)
5. <https://www.hindustantimes.com/india-news/over-1-600-killed-due-to-extreme-weather-patterns-in-2016/story-ZXToWjowatrEYk81af2V4H.html> (last visited on, 10 July 2018) [↑](#footnote-ref-5)
6. Definition of ‘houseless households’ according to Census 2011, see <http://censusindia.gov.in/Data_Products/Data_Highlights/Data_Highlights_link/concepts_def_hh.pdf> (last visited on, 10 July 2018) [↑](#footnote-ref-6)
7. Article 26 of the Constitution of South Africa declares a universal right of access to adequate housing. It sets up a baseline against forcible evictions while it mandates the government to progressively realise this right through legislative and other measures. [↑](#footnote-ref-7)
8. The South African Human Rights Commission Investigative Hearing Report: Access to Housing, Local Governance and Service Delivery, 9 (2015) (last visited on, 10 July 2018). (Hereafter, SAHRC Report) [↑](#footnote-ref-8)
9. Community Survey 2016, Statistics South Africa, [↑](#footnote-ref-9)
10. Ibid. p. 10 [↑](#footnote-ref-10)
11. Curtis Berger, *Beyond Homelessness: An Entitlement to Housing*, 45U. Miami L. Rev. 315, 316-7 (1991) (Hereafter, Berger). In fact, in 1990 the UN noted that while there are about 100 million homeless people worldwide, the population of those inadequately housed could be over a billion. [↑](#footnote-ref-11)
12. Given that there are overlapping causes for hunger and homelessness including lack of affordable housing, unemployment and poverty, it is likely that they would tend to have similar socio-economic profile as well. The WHO *Health Principles of Housing* (Geneva: 1989) lists eleven basic principles that establish relationship between housing environment and health of inhabitants. [↑](#footnote-ref-12)
13. See, Iris Marion Young, *Five Faces of Oppression* in Justice and Politics of Difference (1990) [↑](#footnote-ref-13)
14. Leela Fernandes, *Politics of Forgetting: Class Politics, State Power and the Restructuring of Urban Spaces in India*, 41 Urban Studies, 2415 (2004) [↑](#footnote-ref-14)
15. SAHRC Report, p.9 [↑](#footnote-ref-15)
16. David Harvey, The Right to the City in ‘Social Justice and the City’ [↑](#footnote-ref-16)
17. Marie-Hélène Zérah et al, *Right to the City and Urban Citizenship in the Indian Context* in Urban Policies and the Right to the City in India: Rights, Responsibilities and Citizenship (UNESCO: 2011). The authors of the cited paper preferred to call the incremental approach as reformist and transformative approach as radical. However, I believe that ‘incremental’ and ‘transformative’ distinction better captures the core motivation informing the divide. [↑](#footnote-ref-17)
18. Ibid. [↑](#footnote-ref-18)
19. Henri Lefebvre, The Right to the City (Hereafter, Lefebvre) [↑](#footnote-ref-19)
20. David Harvey, Social Justice and the City; Leela Fernandes, *Politics of Forgetting: Class Politics, State Power and the Restructuring of Urban Spaces in India*, 41 Urban Studies, 2415 (2004); Ana Sugranyes and Charlotte Mathivet (ed.), Cities for All: Proposal and Experiences towards the Right to the City (2010) [↑](#footnote-ref-20)
21. Lefebvre [↑](#footnote-ref-21)
22. Harvey, 319 [↑](#footnote-ref-22)
23. Ibid. [↑](#footnote-ref-23)
24. Alan Mabin, *Dispossession, Exploitation and Struggle: an Historical Overview of South African Urbanization* in David M. Smith (ed.), The Apartheid City and Beyond: Urbanisation and Social Change in South Africa, 13 (1992). Mabin notes further that migration from villages to towns pre-dates colonization. However, with the growth and exploitation of diamond industry presided over by imperial forces, the cityscape and social relations, particularly around Kimberley began to change rapidly and drastically. [↑](#footnote-ref-24)
25. Ibid. at 14 [↑](#footnote-ref-25)
26. Ibid. 15 [↑](#footnote-ref-26)
27. Ibid. [↑](#footnote-ref-27)
28. Ibid. [↑](#footnote-ref-28)
29. Dhiru Soni, *Apartheid State and Black Housing Struggle* in David M. Smith (ed.), The Apartheid City and Beyond: Urbanisation and Social Change in South Africa, 52 (1992) [↑](#footnote-ref-29)
30. Ibid. [↑](#footnote-ref-30)
31. Patrick Heller and Partha Mukopadhyay, *State-produced inequality in an Indian City*, 672 SEMINAR 51, 52 (2015). (Hereafter, Heller and Mukopadhyay) [↑](#footnote-ref-31)
32. Niranjan Sahoo, A Tale of Three Cities: India’s Exclusionary Urbanisation (2016), available at <https://www.orfonline.org/wp-content/uploads/2016/09/ORF_IssueBrief_156.pdf> (last visited on 18 July 2018) (Hereafter, Sahoo) [↑](#footnote-ref-32)
33. Surinder Jodhka, *Dalits in Business: Self Employed Scheduled Castes in North West India*, 45 EPW 41, 43-4 (2010). It must also be noted that economic reforms post 1991 entailed retreat of the State from most economic activities and growth of private sector. While, scheduled castes had the benefit of quotas in government employment, the same was non-existent in private sector. While Dalit entrepreneurs existed prior to 1991 too, the economic reforms compelled them to look for jobs in private sector or self-employ themselves to participate in the urban economy. This we see a significant migration of Dalits from rural areas towards urban. About 20% of Dalit entrepreneurs were migrants in Jodhka’s field study. However, the spatial distribution of residences has also seen pronounced caste-based divisions in the forms of ghettos and colonies. Migration also helped a small number of them to ‘hide’ their caste identities, relatively than hiding racial origins. Yet, where people knew of Dalit origins of a family (case of an ex-serviceman in Jodhka’s study), the identity itself was barrier to entrepreneurial opportunities in terms of finding a place to start a business. [↑](#footnote-ref-33)
34. Pranav Sidhwani, Spatial Inequalities in Big Indian Cities, 50 EPW (2015) [↑](#footnote-ref-34)
35. Sahoo, 2 [↑](#footnote-ref-35)
36. Heller and Mukopadhyay, 52. While the authors restrict their study to Delhi, there are reasons to believe that their findings would be true for a lot of other medium to large to cities in India. [↑](#footnote-ref-36)
37. Heller and Mukopadhyay, 52-4. See also, Patrick Heller, Partha Mukopadhyay, Subhadra Banda et al, Exclusion, Informality, and Predation in the Cities of Delhi: An Overview of the Cities of Delhi Project (2015) available at <https://www.patrickheller.com/uploads/1/5/3/7/15377686/cities_of_delhi-overview.pdf> (last visited on 18 July 2018) [↑](#footnote-ref-37)
38. Ibid. 54 [↑](#footnote-ref-38)
39. Ibid. Additionally, the socio-economic profiling of such colonies and communities would suggest that they primarily house the historically underserved population groups including Dalits, Muslims and migrant labourers. [↑](#footnote-ref-39)
40. Marie-Hélène Zérah et al, *Right to the City and Urban Citizenship in the Indian Context* in Urban Policies and the Right to the City in India: Rights, Responsibilities and Citizenship (UNESCO: 2011) [↑](#footnote-ref-40)
41. Heller and Mukopadhyay, 51. In fact, B.R. Ambedkar had famously called upon Dalits to leave the ‘narrow-minded’ villages for cities that held better prospects for equality of opportunities. [↑](#footnote-ref-41)
42. Raquel Rolnik, *Place, inhabitance and citizenship: the right to housing and the right to the city in the contemporary urban world*, 14 International Journal of Housing Policy 293 (2014). [↑](#footnote-ref-42)
43. Ronald Dworkin, *Taking Rights Seriously* in Taking Rights Seriously. [↑](#footnote-ref-43)
44. Berger 317. See also, CESCR General Comment No. 4 – The Right to Adequate Housing: Article 11(1) of the Convention, E/1992/23 (66th Session, 1991) (Hereafter, General Comment No. 4). Even the general comment notes that ‘personal or household financial costs associated with housing should be at such level that attainment and satisfaction of other basic needs are not threatened or compromised.’ In the same vein, tenants should be protected from exorbitant rent levels. [↑](#footnote-ref-44)
45. Anil Kumar Vaddiraju, *Urban Governance and the Right to the City*, 51(32) EPW 21-3 (2016) [↑](#footnote-ref-45)
46. General Comment No. 4, 2 [↑](#footnote-ref-46)
47. General Comment No. 4, 2-3 [↑](#footnote-ref-47)
48. See also, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23. The Covenant must be interpreted to establish ‘minimum core’ obligation for every socio-economic right that the State Parties must endeavor to achieve. However, even the ‘minimum core’ is context dependent. The General Comment only seems to enjoin to state to establish certain baseline obligations with respect to right listed in it. [↑](#footnote-ref-48)
49. See, WHO *Health Principles of Housing*. Housing is adequate when it promotes physical and mental well-being of its inhabitants. [↑](#footnote-ref-49)
50. Housing should be located where the residents could access livelihood, health care, schools, child care and other social facilities. [↑](#footnote-ref-50)
51. Modern technologies of housing should be culturally sensitive and provision of housing facilities should ensure that expression of cultural identity is promoted and not sacrificed. [↑](#footnote-ref-51)
52. General Comment No. 4, 4-5 [↑](#footnote-ref-52)
53. Part III, Constitution of India [↑](#footnote-ref-53)
54. Part IV, Constitution of India. [↑](#footnote-ref-54)
55. For a comprehensive overview of judicial activism in India, see S.P. Sathe, *Judicial Activism: The Indian Experience*, 6 Washington Univ. Jour. Law & Policy 29, 43-63 (2001). [↑](#footnote-ref-55)
56. *Francis Coraile Mullin v. The Administrator, Union Territory of Delhi*, AIR 1981 SC 746 [↑](#footnote-ref-56)
57. *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545 [↑](#footnote-ref-57)
58. *Minerva Mills v. Union of India*, AIR 1980 SC 1789. [↑](#footnote-ref-58)
59. However, see *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664. [↑](#footnote-ref-59)
60. *Government of Republic of South Africa v. Grootboom*, (CCT 11/00) [2000] ZACC 19 (Per Yacoob J.) [↑](#footnote-ref-60)
61. Ibid. [↑](#footnote-ref-61)
62. Ibid. [↑](#footnote-ref-62)
63. See also, *Port Elizabeth Municipality v. Various Occupiers*, (CCT 53/03) [2004] ZACC 7 (Sachs J. emphasizes on the historical shift from Prevention of Illegal Squatting Act to Prevention of Illegal Eviction and Unlawful Occupation of Land Act (Hereafter, PIE Act)) [↑](#footnote-ref-63)
64. Ibid. The PIE Act, Sachs J. explains recognizes this balance as well as difference in eviction proceedings brought by a private land-owner and municipality. [↑](#footnote-ref-64)
65. Ibid. [↑](#footnote-ref-65)
66. The court in *Occupiers of 51 Olivia Road v. City of Johannesburg* (CCT 24/07) 2008 ZACC 1, held that “larger the number of people potentially to be affected by eviction, the greater the need for structured, consistent and careful engagement.” Also, the engagement must be in good faith. (Hereafter, *Olivia Road*) [↑](#footnote-ref-66)
67. Ibid. [↑](#footnote-ref-67)
68. *Bongane Ngomane v. Govan Mbeki 0oMunicipality*, (CCT 17/16) [2016] ZACC 31 [↑](#footnote-ref-68)
69. *Yolanda Daniels v. Theo Scribante*, (CCT 50/16) [2017] ZACC 13 (Hereafter, *Yolanda Daniels*) [↑](#footnote-ref-69)
70. Ibid. [↑](#footnote-ref-70)
71. A relatively early example of this is *City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties (Pty) Ltd.* (CCT 37/11) [2011] ZACC 33 (Hereafter, *Blue Moonlight*) [↑](#footnote-ref-71)
72. *Yolanda Daniels*. Of course, the primary obligation rests with the state and horizontal and vertical relations may not be treated on the same level. [↑](#footnote-ref-72)
73. *Mazibuko v City of Johannesburg* [2009] ZACC 28. While the observation attaches itself to right to adequate water, the court also observed elsewhere that similar approach should inform right to housing as well. However, as explained in *Yolanda Daniels* (supra), this does not eschew obligating a private person completely if the circumstances require it. [↑](#footnote-ref-73)
74. *Nomsa Dladla v. City of Johannesburg*, (CCT 124/16) [2017] ZACC 42. The court clarified that Blue Moonlight must not be misunderstood as sanctioning eviction upon hearing to any type of temporary housing. [↑](#footnote-ref-74)
75. See, General Comment No. 4 [↑](#footnote-ref-75)
76. Factsheet - Universal Periodic Report 2017 – India, 3rd Cycle: Right to Adequate Housing available at <https://www.upr-info.org/sites/default/files/document/india/session_27_-_may_2017/wghr_india_2017_-_full_set_fact-sheets.pdf> (last visited on 24 July 2018) [↑](#footnote-ref-76)
77. Ibid. [↑](#footnote-ref-77)
78. Ibid. [↑](#footnote-ref-78)
79. *Forced Eviction in India 2017: An Alarming National Crisis*, available at <http://hlrn.org.in/documents/Forced_Evictions_2017.pdf> (last visited 26 July 2018) [↑](#footnote-ref-79)
80. Ibid. [↑](#footnote-ref-80)
81. Sections 3, 4 and 9 The Slum Areas (Improvement and Clearance) Act, 1956. In fact, Section 6 of the Act says that the expenses for maintenance and repair of slums shall be borne by the occupiers who have little agency in deciding improvement or demolition. It is ironical they that Universal Periodic Review (supra) recommends that the Government of India should enact a national level rights based housing legislation. [↑](#footnote-ref-81)
82. Maharashtra Slum Area (Improvement and Removal and Redevelopment) Act, 1971. [↑](#footnote-ref-82)
83. Maharashtra Slum Area (Improvement and Removal and Redevelopment) (Amendment) Act, 1995 [↑](#footnote-ref-83)
84. Olga Tellis, *Thirty years after a landmark Supreme Court verdict, slum dwellers’ rights are still ignored*, available at <https://scroll.in/article/776655/thirty-years-after-a-landmark-supreme-court-verdict-slum-dwellers-rights-are-still-ignored> (last visited 26 July 2018) [↑](#footnote-ref-84)
85. *Susme Builders Pvt. Ltd. v. Chief Executive Officer, Slum Rehabilitation Authority*, Civil Appeal 18121/2017 available at <http://sra.gov.in/upload/Judgement_04.pdf> (last visited 26 July 2018). The court notes: “There are many powerful persons involved, be they builders, promoters and even those slum dwellers who have managed to become office bearers of the society of slum dwellers.” [↑](#footnote-ref-85)
86. Ibid. pp. 81-6. [↑](#footnote-ref-86)
87. *Olga Tellis* (supra); *Francis Coralie Mullin* (supra) [↑](#footnote-ref-87)
88. *Chameli Singh v. State of Uttar Pradesh*, (1996) 2 SCC 549 [↑](#footnote-ref-88)
89. See, Margaret Radin, *Property and Personhood*, 34 Stanford Law Review 957 (1982) [↑](#footnote-ref-89)