



# Right to the Indian City

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**Abstract:** *In Indian governance studies, the urban government is largely understudied. Even less research has been done on it from the standpoint of citizenship and rights. In addition to the general requirement to make the city a more welcoming environment for its inhabitants, the right to the city entails the provision of fundamental urban amenities such as basic housing, clean drinking water, sanitary facilities, and a wide range of other necessities. In urban studies, governance has gotten the least attention, and the current discussion is only about governments in major cities. However, the idea of "right to the city" must be applied to cities of all scales. This paper investigates the significance of and potential applications for the Right to the City in Indian cities. It examines how the Right to the City is expressed internationally in both national and international legal frameworks, recounts Indian housing law precedent, and explains the political strategies of staking claims to urban areas in India. The methodology is based on the literature review, via a critical reading, of the available secondary data. This study analyses the Right to the City to highlight the prevalent issues and challenges in its implementation in India. The study concludes that affirming the right to the city as a basic right arising out of the Indian Constitution would lead to an improvement in urban governance, which would then be carried out in a more inclusive way, taking into consideration the fundamental urban and human rights of its residents and contributing to the larger goal of sustainable cities in India.*

**Keywords:** *Right to the City, Urban Governance, Indian Constitution, and Fundamental Human Rights.*

## I. INTRODUCTION

In India, research on governance has mostly ignored urban governance. Even little has been studied in terms of citizenship and rights. The challenges surrounding urban governance are covered in this paper that follows from the perspective of the right to the city. It is vital to emphasize this idea in the Indian context because many states have not properly implemented the constitutional requirements pertaining to urban governance. In addition to the greater need to transform the city into a citizen-friendly area, the right to the city entails the supply of minimal urban infrastructures such as basic housing, drinking water,

sanitation, and a myriad of other necessities. But what exactly is this Right to the City, though? And how does it factor into Indian legal doctrine?

Refugee crises in South Asia have demonstrated that those, fleeing persecution, who seek harbor in Indian cities encounter discrimination from city residents and authorities, compelling them to live lives well below the most fundamental human rights norms. This is a result of urban issues in Indian cities such as congestion, a shortage of available land, and resource constraints caused as a result of inadequate urban planning and legislation.

A division bench of the Delhi High Court ruled in *Ajay Maken v. Union of India*, a case involving the legitimacy of the demolition of Shakur Basti in Delhi, that slum-dwellers had a right to habitation and must be shielded from forcible and sudden displacement. The court cited "The Right to the City", a concept common in urban social movements and international law, in reaching its decision.

This paper investigates the significance of and potential applications for the Right to the City in Indian cities. It examines how the Right to the City is expressed internationally in both national and international legal frameworks, recounts Indian housing law precedent, and explains the political strategies of staking claims to urban areas in India. This study hypothesizes that the right to the city, which ensures "equal cities for all", can help refugees in the area since it successfully combines the perspectives of human rights, sustainable science, and urban planning.

### A. Definitions

In 1968, Henri Lefebvre [7] made the phrase widespread, but he did it in a provocative rather than careful manner. He said that "the right to the city is like a cry and demand", which is the greatest definition. This right gently meanders through the unexpected turns of tourism and nostalgia, the return to the traditional city's center, and the beckoning of existing or recently constructed centralities [5]. He has it ramble through various places, covering things like "the right to information, the right to use numerous services, the right of users to express their opinions on the place and time of their activities in cities; it would also cover the right to use the center".

According to David Harvey [2], the right to the city is a communal right to alter the city and influence the urbanization process. Therefore, the right to the city encompasses much more than just the individual's access to the resources it contains; it also includes the right to transform the city into what we see fit in order to transform ourselves. Furthermore, transforming the city requires the exercise of a communal authority over the processes of urbanization, therefore it is a collective right rather than an individual one [4].

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Although the “Right to the City” is not a legal right, which can be enforced in a court of law in India, it is a powerful political statement that has been employed by citizens. It is a transformed and renewed right to urban life, not restricted to those formally recognized by the state as citizens but extends to all urban inhabitants [9]. This right seeks to further the interests of the whole society. Hence, the Right to the City is not based on nationality, ethnicity, or even citizenship, but rather on inhabitation, on the idea of people living and taking part in the regularity of city life on a daily basis.

The “World Charter for the Right to the City”, which offers a progressive framework to rethink cities and urbanization, defines it as the equitable enjoyment of cities while respecting the principles of sustainability, democracy, and social justice. This right belongs to all city residents, particularly the weak and disadvantaged, on whom is further conferred legality for such actions and organization, as their culture and custom suggest, as a means of achieving the complete enjoyment of the right to an adequate standard of living [1]. The notion of the Right to the City is founded on a holistic vision, which covers civil, political, economic, social, cultural, and environmental rights embodied in international human rights. Additionally, it guarantees the preservation of historical and cultural heritages, as well as the freedoms of associations and organisations, respect for minorities, and racial, ethnic, sexual, and cultural diversity.

### II. BACKGROUND AND NEED FOR THE STUDY

The World Charter for the Right to the City formalized the right on a global scale. All city residents have the right to live in, create, and use inclusive, just, and sustainable cities that address all factors crucial to a high quality of life. The responsibility to claim, protect, and advance the Right to the City also falls on governments, especially local self-government organisations, and the general public.

This study contends that in order for the concept of the Right to the City in India to reach its full potential, it must go beyond a legal framework and incorporate political tactics that stake claims to housing and urban areas. In support of this, it is asserted that incorporating this right into Indian domestic law will not only help Indian cities to create robust and well-planned cities for their own residents but also enable them to better meet the needs of refugees.

### III. OBJECTIVES OF THE STUDY

This paper is written with the following objectives:

- To do a literature review of the available secondary data on the concept of the “Right to the City” in Indian context.
- To highlight the existing condition, with regards to the Right to the City, in our country.
- To recognize a way forward for the legalization of the right in India.

### IV. METHODOLOGY

As “Right to the City” is a concept and a phrase that has been increasingly used in academic, activist, and policy discourses on inclusive urbanization around the world, there was a wealth of information available for this review article. In identifying sources for this literature review, multiple databases were utilized. To begin with, Google Scholar and

Science Direct were used to get an initial sample of the types of articles available on the subject. The search items selected for this literary analysis included: urban governance in India, Right to the City, Article 21 of the Constitution of India. In addition to the database search, a number of articles were identified using the snowball sampling method. The criteria used for analyzing the resources was to establish that the source is in line with the purpose of this literature review. In addition to this, I used the case study method and also looked for types of journals that included research articles that were thematically aligned with the objectives of this study.

### V. REVIEW OF LITERATURE

The concept and phrase “Right to the City” has become more frequently used in academic, activist, and governmental debates on inclusive urbanization around the world. The phrase “the right to the city is like a cry and a demand... a transformed and regenerated right to urban life” was originally used by French philosopher Henri Lefebvre in 1967’s *Le Droit à la ville* (The Right to the City).

Sir Lefebvre defines the Right to the City as everyone who lives in a city, not just citizens, having the right to participate in and make use of urban resources. This means that all people living in cities should be allowed to access, occupy, and use urban space, as well as participate in decisions about it. In order to change cities through the use of communal power and “reshape the processes of urbanization”, Davis Harvey, who further popularized this concept, emphasized that the Right to the City is a collective rather than a personal one. The Right to the City has emerged as a popular framework for outlining alternative city visions and laying forth a number of demands on matters of social justice and urban equality. Additionally, it has been utilized to increase participation and inclusivity in urban planning, budgeting, and government. The concept has also gained a lot of support in numerous international venues since the passage of the World Charter on the Right to the City in 2005. It became the cornerstone of the New Urban Agenda, which was accepted during Habitat III, the 2016 UN Conference on Housing and Sustainable Urban Development, held in Quito, Ecuador.

The Right to the City is gradually becoming recognized in law, even if it was not first thought of as a legal right. This is notably true in the global south, where countries like Brazil, Ecuador, and Mexico have passed legislation recognizing this concept. For instance, Brazil’s City Statute of 2001 loosens the idea of private property ownership by giving property’s social function priority over its commercial function. It also encourages participatory forms of urban governance in which neighborhood associations play a significant role in formulation and execution of urban development plans.

### VI. CASE REVIEWS

In Indian cities, a significant share of the population resides in slums and works informally. A large portion of India’s urban poor are also refugees who conduct their business informally, beyond the parameters of the city’s master plan, and in conflict with the law.



They stake out claims to urban housing by initially seizing a location, then gradually constructing and acquiring the necessary urban infrastructure and services through a variety of clandestine methods and talks with the government. Disadvantaged groups in Indian cities frequently claim the city and its resources and exercise their Right to the City primarily through such actions, which may not be entirely legal.

#### A. Ajay Maken v Union of India

On the morning of December 12, 2015, residents of the Shakur Basti were greeted by bulldozers at their doorstep. On March 23, 2019, the division bench of High Court delivered the final judgment, authored by Justice Muralidhar, expanded on the right to housing and provided slum-dwellers constitutional protection from forced and unannounced eviction [3].

The judgment introduces the idea of Right to the City by saying it is necessary to acknowledge that there is increasing recognition in the international sphere of what is termed as the Right to the City, which in the context of the case on hand, is an important element in the policy for rehabilitation of slum-dwellers.

#### B. Refugees in Indian Cities

India currently hosts refugees from Sri Lanka, Pakistan, Bangladesh, Tibet, Afghanistan and Myanmar, and non-existence of a national legal framework with non-ratification of the 1951 Convention and the 1967 Protocol relating to the status of refugees [8]. The plight of refugees forced to survive in Indian cities has led to violations of basic human rights and complications under international refugee law. There is, therefore, a need to rethink how the problems of refugees in cities can be resolved at the same time as the problems of urban governance so that a balance can be established between the preservation of basic human rights of refugees in cities and effective urban governance.

### VII. APPROACH TO ACHIEVE “RIGHT TO THE INDIAN CITY”

The Indian Constitution’s structure is very expansive, and it is also the longest Constitution in the world. Since Part III of the Indian Constitution formalizes the conferral of an individual’s inherent rights, human rights can only be added or included under Indian law by being affirmed as a fundamental right under that section [6]. Therefore, it would be necessary to actively affirm the Right to the City in India by incorporating it as a fundamental right. In India, judicial activism opened the path for the inclusion of fundamental human rights, and Article 21, the core provision of the Constitution, serves as proof of this. This is primarily because, despite the fact that Article 21 only expressly protects the rights to life and personal liberty, the Supreme Court of India has interpreted the provision to cover all rights that are fundamental to human dignity and are necessary for their full and unrestricted development (*Maneka Gandhi v. Union of India*). A few of the components of the Right to the City, such as the right to health (*C.E.S.C. Ltd. v. Subash Chandra Bose*), the right to shelter (*Chameli Singh v. State of U.P.*), and the right to livelihood, already exist as rights under Article 21 of the Indian Constitution (*Olga Tellis v. Bombay Municipal Corporation*).

### VIII. FINDINGS

The notion that the Indian Constitution contains references to the right to the city is not a recent development. Instead, the Delhi High Court, in ruling on a case involving the illegal razing and destruction of the residential properties of the informal settlers in Delhi by the Municipal Corporation, has explicitly stated that the right to the city does, in fact, flow out of Article 21 of the Indian Constitution (*Ajay Maken v. Union of India*) [10]. The problem, though, is that while the Delhi High Court is a jurisdictional court, other state high courts are not required to abide by this ruling because it simply has “persuasive value” and are free to hold a different opinion. In order to ensure that the Right to the City is recognised as a legal right under the Indian Constitution for the benefit of the suffering urban poor in Indian cities, it is therefore of the utmost importance that this issue is brought before the Supreme Court in the form of a Public Interest Litigation (PIL).

### IX. CONCLUSION

Due to the existence of its concomitants from numerous Supreme Court rulings, it is abundantly obvious from the discussion presented above that the Right to the City does have a legal basis to stand under the Indian Constitution. Similar to the approach followed by the Delhi High Court, the Supreme Court might affirm the right to the City as a basic right arising out of the Indian Constitution, which would be fully capable of inspiring legislation and policymaking in cities. In the end, this would lead to an improvement in urban governance, which would then be carried out in a more inclusive way, taking into consideration the fundamental urban and human rights of its residents and contributing to the larger goal of sustainable cities in India.

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**Ms. Swati Dushyant Sisoudiya** is a second year, Master of Urban Planning student at School of Planning and Development, Sushant University, Gurugram. She completed her Bachelor's in Architecture from Accurate Institute of Architecture and Planning in 2020. She graduated with First Division scoring 72.35%. During the course of her graduation, she was very closely involved in the Redevelopment of Gurugram Railway Station

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