



*Home-based workers hand rolling Indian-style cigarettes in informal settlements in India.  
Photo Credit: Paula Bronstein/Getty Images Reportage*

## The “Right to the City” and Emerging Indian Jurisprudence: Implications for Informal Livelihoods

Mathew Idiculla<sup>1</sup> and Roopa Madhav<sup>2</sup>

The “Right to the City” idea has gained traction in international forums, especially since 2005, with the adoption of the World Charter on the Right to the City. As the result of a global campaign by urban activists and civil society coalitions, the Right to the City became one of the key drivers for the New Urban Agenda that was adopted in the UN Conference on Housing and Sustainable Urban Development (Habitat III) in 2016. The New

Urban Agenda states that “all inhabitants” have the right to “inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements”.<sup>3</sup>

The idea of the Right to the City was first introduced by French philosopher Henri Lefebvre who said that “the right to the city is like a cry and a demand [...] a transformed and renewed right to urban life”.<sup>4</sup> The Right

<sup>1</sup> Mathew Idiculla is an urban law researcher based in Bengaluru and works with WIEGO as a consultant.

<sup>2</sup> Roopa Madhav is WIEGO Law Programme’s Coordinator for Asia.

<sup>3</sup> The New Urban Agenda, United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador, 20 October 2016. Available at <https://habitat3.org/the-new-urban-agenda/>

<sup>4</sup> Lefebvre, Henri. *Writings on cities*. Blackwell, Cambridge, 1996.

to the City, according to Lefebvre, indicates a right of all urban inhabitants—not just citizens—to participate in and appropriate urban space and resources. In other words, all urban inhabitants should be able to access, occupy and use urban space and participate in decision-making on its use.<sup>5</sup> David Harvey, who further popularized the Right to the City, explains that it is a “common rather than an individual right” that seeks to transform cities by the exercise of collective power “to reshape the processes of urbanization.”<sup>6</sup> It refers to the collective right of all urban inhabitants to make claims over the use and production of urban space and to participate in and contribute to the urban economy.

In many parts of the Global South—especially in Latin America—urban social movements have invoked the Right to the City as a slogan to advocate for and further a host of progressive claims and alternative visions of urban development. But what is the scope of such a right in law? And how might informal workers use the Right to the City to secure their livelihoods? In this piece, we analyze a recent Indian High Court ruling that relies on Right to the City debates to protect those living in informal settlements from forced eviction. We will also explore the possibilities that this jurisprudence presents to advocate for informal workers’ rights in the Global South.

## The Jurisprudence of the Right to the City: The *Ajay Maken* Case

The Right to the City, though not initially conceptualized as a legal right, is gaining recognition in law, especially in the Global South.<sup>7</sup> Brazil’s City Statute of 2001 is an interesting example of how the idea has been

translated into law. The Statute introduced a new property rights regime which loosened the notion of individual ownership of property. It privileges the social function of property over its commercial function, recognizing the “use value” of property and not just the “exchange value”.<sup>8</sup> It also facilitates participatory forms of urban governance, in which community groups play a dominant role in the conception and implementation of urban development plans and projects.<sup>9</sup>

The popularity of the idea of the Right to the City spread from Brazil to other parts of Latin America. The Constitution of Ecuador—enacted in 2008—states that the Right to the City is based on “the democratic management of the city, on the social and environmental function of property and of the city, and on the full exercise of citizenship”.<sup>10</sup> Mexico City’s Right to the City Charter is the most prominent example of the recognition of this idea on a city level—it was passed in 2010. The charter advocates for the “equitable use” of cities based on the principles of sustainability, democracy, equity and social justice.<sup>11</sup>

Although there have been no legislative pronouncements on the Right to the City in India, a recent judgment of the Delhi High Court has invoked this idea.<sup>12</sup> In *Ajay Maken v. Union of India*<sup>13</sup>, the inhabitants of Shakur Basti, an informal settlement near the railway tracks in New Delhi, legally challenged the government for demolishing their homes. The judgment—delivered in March 2019 by a division bench of the Delhi High Court consisting of Justice S Muralidhar and Justice Vibhu Bakhru—invoked the Right to the City. It held that inhabitants of informal settlements have the right to housing and should be protected from forced

<sup>5</sup> Purcell, Mark. “Excavating Lefebvre: The right to the city and its urban politics of the inhabitant.” *GeoJournal*. 58.2-3 (2002): 99-108

<sup>6</sup> Harvey, David. “The right to the city.” *New left review*. 53 (2008): 23-40.

<sup>7</sup> Coggin, Thomas. “Law and the New Urban Agenda: A role for the right to the city?” (2018) *Fordham Urban Law Journal*. City Square

<sup>8</sup> Crawford, Colin. “A curious doctrinal marriage: the social function of property and the right to the city in Brazil.” Léon Duguit and the Social Obligation Norm of Property. Springer, Singapore, 2019. 253-266.; Pindell, Ngai. “Finding a right to the city: Exploring property and community in Brazil and in the United States.” *Vand. J. Transnat’l L.* 39 (2006): 435;

<sup>9</sup> Coggin, Thomas. “Law and the New Urban Agenda: A role for the right to the city?” (2018) *Fordham Urban Law Journal*. City Square

<sup>10</sup> Article 31, Section 6, Constitution of the Republic of Ecuador. Available at: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

<sup>11</sup> Evans, Claire Meredith. *Upgrading from below: A collective approach to the right to the city in the Federal District, Mexico*. Diss. Massachusetts Institute of Technology, 2015.

<sup>12</sup> Idiculla, Mathew. “A Right to the Indian City? Legal and Political Claims over Housing and Urban Space in India.” *Socio-Legal Rev.* 16 (2020): 1.

<sup>13</sup> W.P.(C) 11616/2015 Available at <https://indiankanoon.org/doc/159570569/>



*Informal urban settlements in India.  
Photo Credit: Demetria Tsoutouras*

and unannounced eviction. We discuss the ruling under three broad headings, highlighting critical aspects that need further attention in legal discourse on the Right to the City and the related rights to work, livelihood and housing.

### **The Right to the City**

The Court began the discussion on the Right to the City by stating that the concept is relevant to this case as “an important element in the policy for rehabilitation of slum dwellers”.<sup>14</sup> The Court then traced the background of the Right to the City in international law, citing the Istanbul Declaration on Human Settlements of 1996 adopted by UN Habitat II, before referring to documents of UN Habitat III. The judgment relied on a background policy paper to Habitat III—Right to the City and Cities for All—for its definition of the Right to the City as the “right of all inhabitants present and future, to occupy, use and produce just, inclusive and

sustainable cities, defined as a common good essential to the quality of life.”<sup>15</sup> The Court proceeded by reflecting on how this idea of the “city as a common good” was incorporated into the New Urban Agenda, which protects the right of all inhabitants to “inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities”<sup>16</sup>, and thereby acknowledges the Right to the City.<sup>17</sup>

For a conceptual understanding of the idea, the judgment quoted legal scholar Upendra Baxi, who argued that the Right to the City “is a right not in the sense of liberty but in the sense of power; it is an individual as well as a collective or common right; it is a right to call for, or achieve, change in our living spaces and ourselves. However, the ‘we-ness’ for transformation is not a given but has to be constructed, forged, or fabricated if only because those who wield economic, social,

<sup>14</sup> Para 80.

<sup>15</sup> Para 82.2.

<sup>16</sup> Para 82.4.

<sup>17</sup> In the final version of the New Urban Agenda, the Right to the City is explicitly invoked only in passing along with the idea of “Cities for All”. However, many of the core ideas championed in Policy Paper “Right to the City and Cities for All” do find space in the New Urban Agenda.

and political domination aspire always towards fragmentation of the emergent ‘we-ness’. In this sense, the RTTC is a ‘right’ to struggle for maintaining critical social solidarities.”<sup>18</sup>

It is interesting to see the judgment refer to Baxi’s analysis, which is itself based on David Harvey’s statement that the Right to the City “is a right to change ourselves by changing the city”.<sup>19</sup> The court here is referring to a more expansive and radical conception of a right, framed as a collective common right, rather than as a conventional individual legal right in the liberal democratic tradition. Such framing of the Right to the City did not play a decisive role for the court to arrive at its decision in *Ajay Maken*, since it mainly relied on judicial precedents on the right to shelter and procedural protections against evictions. However, even as *obiter dicta*, invoking ideas with such radical philosophical moorings in a judgment holds significant persuasive value that future judgments can develop and build upon. The framing of the city as a common good offers multiple possibilities that are relevant for a wide variety of fields, ranging from informal livelihoods and urban resource management to urban planning and property rights.<sup>20</sup>

### Administrative and Procedural Safeguards

In the *Ajay Maken* case, the Railways had failed to follow due process when it evicted the approximately 5,000 people living in 1,200 settlements in Shakur Basti. This was in clear violation of the earlier *Sudama Singh*<sup>21</sup> judgment of the Delhi High Court, which requires the state to give prior notice and comply with fair procedure before undertaking any evictions. The Supreme Court in the *Olga Tellis* Case<sup>22</sup> opined that the principles of natural justice (*audi alterem partem*) cannot be denied to

those inhabiting informal settlements on public properties. To quote: “The proposition that notice need not be given of a proposed action because there can possibly be no answer to it, is contrary to the well-recognized understanding of the real import of the rule of hearing. That proposition overlooks that justice must not only be done but must manifestly be seen to be done and confuses one for the other. The appearance of injustice is the denial of justice.”<sup>23</sup>

Interpreting the ruling in *Olga Tellis*, the Delhi High Court in *Ajay Maken* acknowledged that poverty drives people to migrate to cities to eke out a living and that there is a need to protect the dignity of circumstance not necessarily guided by choice. “Trespass is a tort. But, even the law of torts requires that though a trespasser may be evicted forcibly, the force used must be no greater than what is reasonable and appropriate to the occasion and, what is even more important, the trespasser should be asked and given a reasonable opportunity to depart before force is used to expel him.”<sup>24</sup>

Drawing from judgments of the South African Constitutional Court<sup>25</sup>, the Court held that any person who is to be evicted should have a right to “meaningful engagement” with any relocation plans. In *Occupiers of 51 Olivia Road, Berea Township v. City of Johannesburg*<sup>26</sup>, the Constitutional Court held that meaningful engagement would require that the “parties engage with each other reasonably and in good faith.” The final judgment in *Ajay Maken* was given only after the Delhi Urban Shelter Improvement Board formulated a Draft Protocol for the rehabilitation of those evicted—including the residents of the Shakur Basti, civil society groups and government

<sup>18</sup> Para 80; Upendra Baxi “A Philosophical Reading of the RTTC” in Zérah, Marie-Hélène, Véronique Dupont, and S. Tawa Lama-Rewal. *Urban policies and the right to the city in India: rights, responsibilities and citizenship*. UNESCO 2011.

<sup>19</sup> Harvey, David. “The right to the city.” *New left review*. 53 (2008): 23-40.

<sup>20</sup> Foster, Sheila R., and Christian Iaione. “The city as a commons.” *Yale L. & Pol’y Rev.* 34 (2015): 281.

<sup>21</sup> *Sudama Singh & Ors. Vs. Government of Delhi & Anr.* 168 (2010) DLT 218.

<sup>22</sup> *Olga Tellis & Ors. vs Bombay Municipal Corporation* 1986 AIR (SC) 180.

<sup>23</sup> Para 47, *Ibid.*

<sup>24</sup> *Maken*, Para 88, n.14.

<sup>25</sup> *Government of the Republic of South Africa v. Irene Grootboom* [2000] ZACC 19; *Port Elizabeth Municipality v. Various Occupiers* [2004] ZACC 7; *Occupiers of 51 Olivia Road, Berea Township v. City of Johannesburg* [2008] ZACC 1; *Residents of Joe Slovo Community, Western Cape v. Thubelisha Homes* [2009] ZACC 16; *City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties 39 (Pty) Ltd.* [2011] ZACC 33.

<sup>26</sup> [2008] ZACC 1.



*Home workers roll bundles of incense sticks in informal settlements in India.  
Photo Credit: Paula Bronstein/Getty Images Reportage*

bodies—following consultative engagements with key stakeholders.<sup>27</sup> Relying on *Sudama Singh* and the Delhi Slum & JJ Rehabilitation and Relocation Policy, from 2015, the Court ruled that conducting a detailed survey, preparing a rehabilitation plan in consultation with informal settlement inhabitants, and starting processes for immediate rehabilitation should be ensured before any eviction by a state authority.<sup>28</sup>

### **Right to City - Livelihood and Informal Workers**

*Ajay Maken* deals with housing rights in informal settlements, and these are innately linked with the right to carry out informal work. Interestingly, this connection is made in *Ajay Maken*, by acknowledging that the informal workers residing in such settlements “contribute to the social and economic life

of a city.”<sup>29</sup> It observed that the settlement inhabitants include “sanitation workers, garbage collectors, domestic help, rickshaw pullers, labourers and a wide range of service providers indispensable to a healthy urban life”.<sup>30</sup> It further observed that many of these workers “travel long distances to reach the city to provide services, and many continue to live in deplorable conditions, suffering indignities just to make sure that the rest of the population is able to live a comfortable life”.<sup>31</sup> Therefore, their housing needs should be prioritized.

For informal workers, particularly home-based workers, housing is an essential productive asset. Micro-enterprises, self-employed home-based workers, waged homeworkers and other self-employed workers use their dwelling not only as a place to live, but also to earn a living. The state’s efforts to build world-class

<sup>27</sup> Protocol for Removal of Jhuggis and JJ Bastis in Delhi, Delhi Urban Shelter Improvement Board. Available at <https://delhishelterboard.in/main/wp-content/uploads/2012/01/Protocol-1.pdf>

<sup>28</sup> However, in a major setback that ignores this jurisprudence, the Supreme Court of India, in the long running *M.C. Mehta v. Union of India* case (W.P. No 13029/1985) passed an order on 31 August 2020, directed the removal of 48,000 informal settlements along the Railway tracks in Delhi within 3 months, without hearing the affected parties. The order is yet to be implemented.

<sup>29</sup> Para 83

<sup>30</sup> *Ibid*

<sup>31</sup> *Ibid*

cities overlook this thriving economy that contributes to sustain the city, yet the *Ajay Maken* case acknowledges their existence.

## Right to the City and Informal Livelihoods: Agenda for Advocacy

The Right to the City discourse expands rights to all urban inhabitants—not just citizens—to access, occupy and use urban space and to have a voice in decisions concerning this space. It formulates a new idea of citizenship, not derived from the formal membership of a state, but based on inhabitation and participation in the quotidian practices and transactions in the city.<sup>32</sup> It recognizes the rights of all inhabitants to live, work and participate in urban life. It breaks the legal formalism associated with citizenship, occupation and housing and acknowledges the rights of informal inhabitants over the city. It can be a useful concept for informal workers to invoke when making claims over urban space.

The Right to the City, along with the framework of the New Urban Agenda, offers informal workers a basis for articulating their rights over the city. The New Urban Agenda acknowledges housing and decent work as critical to ensuring sustainable urban cities.<sup>33</sup> It further acknowledges the contribution of informal workers and seeks to promote “full and productive employment and decent work for all, by ensuring the creation of decent jobs and equal access for all to economic and productive resources and opportunities”.<sup>34</sup>

The Right to the City privileges the social function of cities and property over its legal character and commercial value. It recognizes the contribution of people living in informal settlements and working in the informal economy and values it over claims made by others purely on the basis of the formal, legal or commercial worthiness of their activities. It

privileges the use value claims over that of the exchange or commercial value, reintroducing the commons claims over the resources of the city. As Coggin argues, the social function of cities may be characterized, firstly, as a usufruct that challenges the private/public and order/disorder binary in law and, secondly, as a process of commoning that privileges how people govern, manage and appropriate space in their everyday interactions.<sup>35</sup> Translating this into law would mean that informal sector workers’ right to organize themselves is recognized and that their right to shelter, livelihood and the ability to carry out their occupation in the city is legally protected and enforced.

Informal workers, including home-based workers, street vendors and waste pickers, can use the Right to the City for furthering their claims over the city in multiple ways. For home-based workers, the right to carry out their occupation is fundamentally dependent on their right to occupy their homes. Protecting and prioritizing the housing rights of urban informal workers, along with access to public space (particularly urban commons), is necessary for them to exercise their rights in the city. Judgments like *Ajay Maken* can be directly relevant for home-based workers to carry on their trade in their homes without the threat of eviction or demolition. For other informal workers, it provides them a foothold to build on and expand the discourse. Future advocacy efforts should aim for the use value of a home, as both a shelter and a workspace, to be clearly articulated in law and policy to protect such informal workers’ rights to the city.

The Right to the City for informal workers is both about access to housing and access to public space for generating livelihoods. Under the Right to the City, street vendors would **have the right to use and occupy public space to do their jobs** without intrusion from state authorities.<sup>36</sup> India’s Street Vending

<sup>32</sup> Purcell, Mark. “Citizenship and the right to the global city: reimagining the capitalist world order.” *International journal of urban and regional research*. 27.3 (2003): 564-590.

<sup>33</sup> Von Broembsen, Marlese. “Social inclusion and the New Urban Agenda: street vendors and public space” In Davidson, Nestor M., and Geeta Tewari, eds. *Law and the New Urban Agenda: A Comparative Perspective*. Routledge, 2020.

<sup>34</sup> New Urban Agenda, Paragraph 15

<sup>35</sup> Coggin, Thomas. *Informal Work and the Social Function of the City: A Framework for Legal Reform in the Urban Environment*. Working Paper (Law) No. 39, Women in Informal Employment: Globalizing and Organizing, 2018.

<sup>36</sup> André Alcântara, Francisco Comaru, Geilson Sampaio, Luciana Itikawa, Luiz Kohara, Maria Carolina Ferro. “Street Vendors and the Right to the City”, Gaspar Garcia Centre for Human Rights, 2014. Available at <https://www.wiego.org/sites/default/files/publications/files/Gaspar-Garcia-Centre-Street-Vendors-Right-City.pdf>



*Informal worker's dwelling in Delhi, India.  
Photo Credit: Rashmi Choudhary*

(Protection of Livelihood and Regulation of Street Vending) Act, 2014<sup>37</sup>, protects the right of street vendors from eviction and is a legal instrument that furthers their Right to the City. This law was enacted after a decades-long struggle of the National Association of Street Vendors of India (NASVI). Future advocacy efforts may also invoke ILC Recommendation concerning the transition from the informal to the formal economy (No. 204), which recognizes public spaces as workplaces and gives informal workers the right to freedom of association and collective bargaining.<sup>38</sup>

Ultimately, the Right to the City is a political struggle and movement for reclaiming urban space. It requires informal workers' groups to exercise their collective power to play a role in decision-making regarding the use and production of urban space. Unlike the formal sector, informal workers and their organizations are often not recognized in formal decision-making processes. The Right to the City framework demands that informal workers' unions, collectives and organizations

are represented in local, national and global policy discussions on cities. The slogan "**Nothing For Us, Without Us**", used by workers' networks like StreetNet, captures the need for informal worker groups to play a central role in decision-making regarding the use of urban space, instead of others deciding for them.<sup>39</sup>

The Right to the City for informal workers is, firstly, about organizing and demanding the right to meaningful participation in decision-making processes that affect their right to live and work in the city. Secondly, meaningful participation must result in a recognition of the heterogeneous values that informal workers bring to the city and their inclusion. Thirdly, it must result in a more equitable distribution of public space to accommodate this heterogeneity, and in acknowledging the needs of street vendors and waste pickers to use and access urban commons, while simultaneously acknowledging their need for shelter. Finally, this universal access to the city and urban space will contribute to building the 'we-ness' of a robust, networked and diverse urban community.

<sup>37</sup> Available at [https://www.indiacode.nic.in/bitstream/123456789/2124/1/A2014\\_\\_07.pdf](https://www.indiacode.nic.in/bitstream/123456789/2124/1/A2014__07.pdf)

<sup>38</sup> Von Broembsen, Marlese. "Social inclusion and the New Urban Agenda: street vendors and public space".

<sup>39</sup> "StreetNet International: Nothing For Us Without Us! New forms of self-organisation by workers in the informal economy". Available at <http://www.europe-solidaire.org/spip.php?article42580>



Home-based worker in Delhi, India.  
Photo Credit: Rashmi Choudhary

**WIEGO's Law Programme** strives to see a world in which:

- international instruments, national and local laws and regulations recognize, include and protect the rights and work of informal workers; and
- informal workers know, use and shape the law to realize secure livelihoods and labour rights.

To advance these goals, we seek three mutually reinforcing outcomes at both global and national levels:

**Outcome 1:** Membership-based organizations of informal workers are better able to use the law (including international legal instruments and administrative justice) in their advocacy strategies.

**Outcome 2:** Legal and civil society organizations support the recognition, inclusion and protection of informal employment in law and policy at local, international and global levels.

**Outcome 3:** Legal scholars and labour lawyers advocate for informal workers in their scholarship and in policy contexts.

For more information, visit the Law programme page at <https://www.wiego.org/our-work-impact/core-programmes/law-programme>



 [wiegoglobal](https://twitter.com/wiegoglobal)  [wiegoglobal](https://www.facebook.com/wiegoglobal)  [wiego.org](https://www.wiego.org)