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LEGAL CHALLENGES IN IMPLEMENTING THE SMART CITIES MISSION IN INDIA: URBAN DISPLACEMENT, HOUSING RIGHTS AND THE RIGHT TO THE CITY

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ABSTRACT

The article analyzes the legal issues surrounding the execution of Smart Cities Mission in India, specifically relating to urban displacement, rights to housing and rights to city. While the mission is being portrayed as modern and inclusive, in reality its implementation usually leads to displacement of informal settlements, and reduction in housing security, with cases of Delhi highlighted as example. The article argues that a legal-institutional setting which favors efficient urban management and infrastructure development over rights of urban citizens, is creating these situations, thus showing the disconnect between the rights to dignity and housing recognized in the constitution and its weak implementation in ground reality. This article thus defines the notion of smart city beyond infrastructure and technologies-it calls for inclusion, dignity and people's rights to stay in the city.

INTRODUCTION

Envisioned in 2015 with the aim of ensuring “smart outcomes on the ground” and improving city-level planning, infrastructure and digital governance in India’s cities, the Smart Cities Mission’s implementation, however, has triggered widespread concern over displacements of its inhabitants-especially in and around informal settlements of urban centres like Delhi¹. Displacement (in terms of evictions, demolitions and insecurity of tenure) has followed demolitions for “beautification drives,” clearance of railway land and expansion of metro lines,

¹ Nat'l Inst. of Urban Affs., *Reference Document on Smart Cities Mission* (2021), <https://niua.in/intranet/sites/default/files/2205.pdf>.

justified using grounds of “public purpose” and “development”². This article analyzes the legal and institutional processes resulting in such practices and argues that the vision of smart urbanism cannot be delinked from constitutionally guaranteed right to housing, human dignity and meaningful citizen participation in their own cities including the right to the city³.

RIGHT TO THE CITY: A LEGAL AND CONSTITUTIONAL IDEA

Around the world, the concept of a "right to the city" has become a lens for questions of, to whom do cities truly belong?⁴. This implies that in addition to their basic access needs to city services-housing, water, transport etc.-city residents must also have some substantive share in decision-making about urban space. In India, the concept of a right to the city has slowly been articulated into a matter of law and politics, notably regarding housing rights and treatment of slums.

Within the constitutional framework, the "right to the city" does not feature as an explicit stand-alone right. Instead, it emerges through other guarantees; for instance, the right to life under Article 21 has been interpreted by the Supreme Court to include the right to housing and a dignified existence. While cases like *Olga Tellis v. Union of India* and *Chameli Singh v. State of U.P.* Have unequivocally confirmed that evictions of slums are not an administrative free-for-all and for most residents the slums and informal settlements are their only home and their removal would constitute a gross violation of their fundamental rights.^{5,6}

It is in the recent past that Delhi has become an important location for these discussions. A series of decisions from the Delhi High Court and the Supreme Court, for instance in the case of *Ajay Maken v. Union of India*, have addressed the issue of people being dispossessed from railway land or other so called unauthorized settlements. While Courts have generally acknowledged that the right to housing and the right to inhabit the city cannot be entirely overridden, even when the state or railways lay claim to land, a significant gap remains between these pronouncements and the on the ground reality of evictions, ambiguous rehabilitation and further displacement to the outer boundaries of the city.

² Hous. & Land Rts. Network, *India's Smart Cities Mission: Housing and Land Rights Analysis* (2017).

³ Mathew Idiculla, *A Right to the Indian City? Legal and Political Claims Over Housing and Urban Space in India*, 16 *Socio-Legal Rev.* 1 (2020)

⁴ Mathew Idiculla, *A Right to the Indian City? Legal and Political Claims Over Housing and Urban Space in India*, 16 *Socio-Legal Rev.* 1 (2022).

⁵ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 SCC 545, AIR 1986 SC 180.[lpr.adb](#)

⁶ *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549.[lpr.adb](#)

This section is significant because it demonstrates that the concerns the Smart Cities Mission is raising are not completely new but are instead part of a much larger conflict between the right to live and belong in the city, and the decision of what kind of cities we will live in. The Mission talks about the idea of a modern, smart city, but is also operating within a constitutional framework that considers housing and dignity to be fundamental rights. The equilibrium between these two ideas or, more accurately, the allowance of them to come into conflict, will be of huge consequence for millions of people living in densely populated and dynamic cities such as Delhi.

LEGAL-INSTITUTIONAL ARCHITECTURE OF THE SMART CITIES MISSION

The Smart Cities Mission cannot function in a vacuum but is within a larger and sometimes confusing Indian urban governance structure. The Mission is situated within a broader framework of Indian laws and administrative frameworks, ranging from the Indian Constitution, municipal legislation, land-acquisition statutes, and environmental laws, as well as specific project laws. The core element of the Mission itself is the concept of the Special Purpose Vehicle or SPV, which is created in every city to plan, fund and implement smart city projects. Theoretically, the SPV brings together local authorities, state governments, and sometimes private partners in a coordinated and transparent manner. The Mission, however, often proceeds without sufficient public oversight and can concentrate significant power in a small few who determine project priority and location.

SPVs are established under the Companies Act, giving them significant operating freedom but simultaneously limiting existing democratic controls. While elected councilors in a municipal corporation answer to voters, an SPV usually has a board primarily composed of government officials and technical experts. When public consultation occurs at all, it usually consists of surveys or consultations rather than robust public decisionmaking and can have a significant negative effect on issues of housing and displacement. When projects are termed "smart corridors" or "beautification drives," there is potential to sideline critical questions of displacement, housing and compensation.

There are several other laws that intersect with the Mission. The LARR Act, 2013 which allows for acquisition of land, is often quoted when land is required for projects. Most of the Smart City projects are, however, in some way or the other, funded through government-owned land or demolition driven clearances that are outside the ambit of LARR. Metro lines, railway lines

and city beautification projects, among others are more likely to operate under the Railways Act or municipality bye-laws that do not guarantee the same levels of compensation and rehabilitation. EIA laws, heritage laws and traffic laws govern what may or may not be done; none of them have human housing rights at their core; none of them place social impact in the heart of the decision-making process.

In the midst of this legal clutter, the Smart Cities Mission acts as the "policy umbrella" which legitimizes and justifies all kinds of urban change. In the language of 'smartness', 'efficiency', 'modernization,' the process may be stripped of critical analysis of beneficiaries and losers. Projects, which might otherwise be contentious, and seen as disruptive, gain legitimacy as part of a national project. Meanwhile, there is no substantial statutory mechanism to ensure the protection of slum dwellers, the informal sector and other marginalized communities within the Mission, and the gap between the rhetoric of the Mission and legal protection is a crucial issue this article aims to explore.

DELHI CASE STUDY: DISPLACEMENT AND THE LAW IN SMART-CITY LINKED PROJECTS

Delhi, as the ultimate example of India's urban future. It is, a mega and globalized city with metro, flyovers and smart infrastructure expanding at an alarming rate, while slums, jhuggis and informal settlements are an everyday feature for millions. Within the framing of the Smart Cities Mission, Delhi offers a revealing case-study of how the law is deployed in efforts to re-order space. Often, this re-ordering involves compromising the safety and dignity of homes.

Many of the projects which are associated with the Mission, or share its spirit, do not appear as Smart Cities projects in everyday life. They simply materialize as new metro corridors, widened roads, railwayland clean-ups, or "beautification" projects, and yet, these also form part of a larger narrative which the Mission articulates, that of cleaning the city, making it more orderly and functional. In Delhi, such changes usually mean eviction notices, bulldozers and, at times, temporary housing or inadequate rehabilitation schemes, based on arguments of public purpose, development, or liberation of land for infrastructure.

The case of railwayland projects are one of the most blatant. These families are either dwelling alongside the railway lines or as a community adjoining stations close to large transportation centres for years now. Upon clear orders for these settlements to be removed in the name of

"smart" up-gradation or aesthetics or safety etc., authorities quote the railways Act and other rules which have provisions enabling railways to evict settlements in its territory viewing them as encroachment on land and structures⁷. Very little obligation is imposed to provide "in situ" housing or for alternative land to the evicted families. Courts may sometimes show a little awareness about the displacement and hardship caused but the railways, the big large-scale projects and national interest seem to dominate all outcomes in this regard.

In a somewhat similar vein is the trend in Metrolinked projects. Enhancing the scope of the Delhi Metro along with other linked projects necessitates acquisitions of land and demolition of existing structures. In certain instances, there are provisions under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 that outline procedures and compensation⁸. Nevertheless, the rapid nature of these large projects with deadlines to meet has many a times led to evictions being implemented without proper notification or due consideration of the concerns of people and at an unprecedented pace, leading to losses not just in housing but also livelihoods and education for workers, daily wage earners and other affected people, however the law might exist on paper for housing rights.

Municipal powers add a further complication. Local bodies such as the Municipal Corporation of Delhi, New Delhi Municipal Council and others possess extensive power to control land use and enforce bylaws. A settlement can more easily be deemed illegally or unauthorised, thus facilitating eviction even when the inhabitants have occupied the land for generations. The Smart Cities Mission, although not always invoked directly in each demolition order, still contributes to the overarching ideology of clean, orderly and modern cities. In this vision, informal settlements become "obstacles to urban improvement rather than legitimate urbanities".

This Delhicentric perspective thus highlights not a single legal contradiction, but a confluence of laws which makes eviction technically legitimate and administratively inevitable. In addition to Railways Act rules and municipal bylaws, land acquisition laws and individual project-related policies are utilized to legitimate clearing out and remaking of the city while rendering it a challenge for affected inhabitants to meaningfully challenge or make claims for their housing rights to be considered as important as the projects. In this regard, Delhi itself can be

⁷ *Ajay Maken v. Union of India*, W.P. (C) No. 11616/2015, judgment dated Mar. 18, 2019 (Delhi High Ct.).

⁸ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, No. 30 of 2013, India Code (2013).

regarded as representative of the larger legal conundrum created by the Smart Cities Mission: how can modern, efficient cities be delivered alongside the basic rights of inhabitants?

CRITICAL LEGAL ANALYSIS: GAPS, CONTRADICTIONS AND DOCTRINAL OPENINGS

It is clear from our experiences in Delhi and other Indian cities that the Smart Cities Mission does not operate in a legal vacuum. It is an intervention into an existing system of property rights, urban ordinances and state authority that pre-dates the mission by several decades. What is particularly disturbing about this existing system is how frequently it acts in ways that work against those that the mission purports to represent. Regulations pertaining to public order, land use or infrastructure development are frequently invoked to justify displacement, while those that could advance housing rights and the right to the city are weak or non-existent.

This is particularly true regarding the discourse of public interest. Both land acquisition laws, railways acts and municipal bylaws are enacted "in the public interest". The concept of public interest is one that, in practice, has consistently privileged large infrastructure projects and state/corporate interests at the expense of the lived experiences of informal workers, hawkers and slum dwellers, marginalising their demands and their very way of life. It is framed in the context of the smart corridor and the railwaysland beautification project as essential for the city's future. The ensuing displacement of thousands is then characterized not as a consequence but rather as a peripheral issue and it becomes legally possible for state actors to claim due process was followed.

A second contradiction relates to the difference between the law as articulated by the courts and practiced by local officials. The Supreme Court has held that right to life encompasses the right to shelter and that forced evictions are not to be treated lightly without rehabilitation. However, in Delhi and other cities, evictions for smartcitylinked projects have persisted, sometimes with insignificant/perfunctory rehabilitation. Such disparity between judicial rulings and practices of local agencies reflect institutional accountability weakness. Even when superior courts issue directions; it often happens that local bodies execute them in superficial/perfunctory ways focusing on mere procedural compliance, overlooking human dignity and rights of families.

A third point concerns the weakness of the statutory framework for social impacts and housing rights in the very context of the Smart Cities Mission. Although SPVs have legal powers to implement projects, there is no explicit, binding obligation to perform comprehensive social

impact assessments with housing rights at the centre. Public participation is usually just an exercise. Existing avenues available for the victims like public interest litigation (PIL) and writ petitions are often slow, uncertain and depend on the judicial discretion. Hence, there is little room for the urban poor to contest evictions effectively or to ensure their right to city being given any serious thought.

However, some judicial interventions can be regarded as significant opportunities within the present legal framework. Several pronouncements of the courts have acknowledged that housing right is a component of the right to life and dignity. PILs have successfully addressed and questioned evictions and have demanded standards of rehabilitation. Such judicial interventions, when seen in the light of emerging traditions, can be interpreted as the beginning of legal traditions recognizing city as a public space. To uphold the words and spirit of the smart city mission, this needs to be complemented with the aforementioned traditions. Legislature, executive bodies and judiciary are to work jointly so as that the law ensures rights and welfare of the poor and the city dwellers and does not become merely an instrument serving the interests of investors and developers.

CONCLUSION: TOWARDS A MORE JUST LEGAL FRAMEWORK FOR SMART CITIES

Beyond being a technical project about roads, metros, and digital networks, the Smart Cities Mission is also a legal and political one about ownership of cities and the allocation of urban space. It demonstrates in cities such as Delhi how existing legal structures are used in implementing smartcitylinked projects to secure land, displace informal settlements and reconfigure the urban form in sometimes arbitrary ways. At the same time, the constitutional and judicial affirmation of rights to housing and life demonstrates the law's potential as a tool for security rather than displacement.

This tension between law's possibilities is a fundamental legal challenge. India's laws explicitly grant the dignity of urban residents and security in their housing; legal structures and processes designed for Smart City implementation, however, disproportionately favor efficiency, speed, and infrastructure over the rights of the urban poor. Municipal powers, railway laws and rules governing land acquisition are used to sanction demolitions; conversely, there are inadequate legal mechanisms for ensuring accountability from city and state authorities. Minimal

requirements exist for rigorous social impact assessments, insitu rehabilitation or long-term engagement with urban communities.

Here it is crucial that the concept of right to city is invoked to create a legal framework that doesn't see displacement as a side effect of modernity, but as something that has to be accounted for in the law and policy. It highlights the need for not just technologically smart cities but also just smart cities. This may necessitate changes in the structure of SPVs, in setting up clear housing-rights clauses when granting approval of projects or for strengthening of public interest litigation to curb illegal evictions. Or this may involve redefinition of the public interest, to avoid sidelining the concerns of slum dwellers, informal workers and other marginalized people at the edges of the law.

In a phase of rapid urbanisation in India and given renewed concerns regarding demolitions in slums, railway land evictions, housing insecurity etc, the legal implications of the Smart Cities Mission need a closer examination. How we design and govern cities today is likely to determine how millions of lives unfold over decades. If the law is to act as an agent for an inclusive, equitable and actually smart future, it needs to be reconstructed as not merely a legalistic device of governance, but a means to justice.