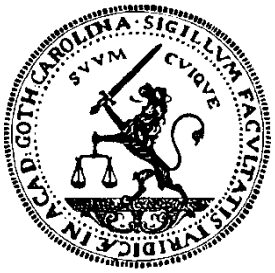

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THE TRANSFORMATIVE POTENTIAL OF THE RIGHT TO THE CITY

An Analysis of the Potential Contribution of the Right to the City in Formulating a Human Rights Response to Urban Socio-Economic Inequalities

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Abstract

The demographic patterns in developing countries have significantly changed in the recent few decades due to the impact of urbanization. The urbanization process has created new challenges; and the enormous divide between haves and have nots has become a defining feature of contemporary urban spaces. The advent of neo liberal globalisation and the integration of developing countries in to the global neo liberal matrix has resulted in exacerbating urban inequalities since the former has structured urban governance in a manner that further excludes the urban poor.

The thesis analyses the contribution the notion the right to the city could make in forming a human rights response to the issue of urban inequality. The right to the city is an emerging idea in the international human rights and development discourse; the idea has entered the United Nations discourse through the work of the United Nations Human Settlement Programme; and also, has been legally recognized in several countries in the Americas. Identifying that the human rights discourse in general has been reluctant to address socio-economic inequality as a human rights problem, the thesis demonstrates that the egalitarian paradigm the right to the city promotes has the potential in broadening the existing conception of human rights by introducing the norm of material equality into the human rights imagination. Further, it argues that such a broadened human rights vision could contribute in transforming the exclusive nature of contemporary urban governance and nurture a more democratic form of decision making in the urban settings.

Chapter 1: Introduction

> *'The global growth of a vast informal proletariat, moreover, is a wholly original structural development unforeseen by either classical Marxism or modernization pundits. Slums indeed challenges social theory to grasp the novelty of a true global residuum lacking the strategic economic power of socialized labour, but massively concentrated in a shanty-town world encircling the fortified enclaves of the urban rich'. - Mike Davis*[1]

1.1 Background

The Urban revolution is perhaps the most influential phenomenon of human geography in our times that has brought a significant transition in the way humans inhabit. Fairly a century ago, the vast majority of the population in the Global South inhabited in rural areas, relying on agriculture as their mode of subsistence. However, the 20th century saw a radical shift of this composition with more and more people migrating to urban centers. Millions of people in developing countries today live in urban areas; and this trend of increased urban population is continuing. The ongoing urbanization in the third world on the one hand, has turned cities into important centers of economic activities; trade, commerce and industries. On the other, it has also created new challenges and problems that has drawn the attention in the international level.

Urban inequality is one such problem associated with contemporary urbanization. Although socio-economic inequality - the gap between the rich and the poor - is not restricted to developing countries, in these countries we see the prevalence of inequalities in its most brutal form; since third world urban inequality is also associated with massive levels of urban poverty. As the United Nations Human Settlement Program (UN Habitat) identifies, most cities fail to make sustainable cities for all; not only in physical, but also in socio, economic and cultural terms[2]. Benefits arising from urbanization; such as the growth of urban wealth are concentrated in the hands of an economic elite; comprising the super-rich and upper middle classes; while the urban poor are excluded from accessing the virtues of urban life. This phenomenon is also associated with exclusive urban governance practices; driven from neo-liberal rationality prioritizing the function of markets over the needs of the social.

In this context, the notion the 'right to the city' has started becoming popular in forums that deal with human rights and development issues. The idea first framed as a politico-philosophical notion by the

[1] Mike Davis, 'Planet of Slums' [2004] 26 New Left Review 72.
[2] United Nations Human Settlements Programme (UN Habitat), *Urbanization and Development: Emerging Futures; World Cities Report 2016* (UN Habitat, 2016).

French Marxist theorist Henri Lefebvre in 1960s has today entered the discourse of certain mainstream actors; notably the United Nations through the work of UN Habitat. In brief, the notion attempts to challenge prevailing exclusions in urban life; and envisions that all inhabitants should have equitable access to the benefits created by urbanization. The nuance of this conception is it frames the objective of ensuring social justice in the urban space as a collective human right of inhabitants. However, the notion remains to be a novel conception; and despite recent attempts of some countries to recognize the right to the city as a distinct right, the idea has not yet been fully recognized as an established human right in the international human rights fora.

This thesis evaluates the contribution this emerging notion could make in developing a human rights response to the issue of urban inequality. The idea of human rights is based on the ideal that all human beings are born free and equal in dignity and rights; and they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood[3]. The thesis draws from the premise that the prevalence of urban inequalities is against the spirit that human rights ideals aspire to realize. Therefore, human rights activists, scholars and institutions have a responsibility to address urban socio-economic inequalities as a matter of human rights. From this perspective, the thesis attempts to analyze how the recognition of the right to the city could strengthen the human rights discourse for the purpose of addressing the urban divide.

1.2 Research Question and Disposition

Premised on the aforementioned background, the question(s) this research strives to address is as follows:

> **What is the contribution the recognition of the right to the city could offer in constructing a human rights response to the problem of urban socio-economic inequalities? How the recognition of the right to the city could transform the exclusive nature of the existing urban governance practices in developing countries?**

I intend to answer these questions in the light of the theoretical literature that discusses the relationship between human rights and socio-economic inequalities. Though the recognition of equality among individuals is a central percept of the human rights discourse, historically, the human rights movement has focused on a particular form of equality; 'status equality' that deals with exclusions and discrimination based on identities. Thus, there is wide attention in the human rights scholarship on inequalities associated with issues such as gender, sexual orientation, disability, ethnic-religious-linguistic minorities and so forth. Though identity-based hierarchies often have been a subject, the reference to class-based hierarchies in the human rights scholarship is immaterial. Historically, issues pertaining to class, redistribution, socio-economic exclusion has been the domain of left-leaning

[3] Universal Declaration of Human Rights Article 1.

political parties, trade unions and so forth. The mainstream human rights discourse has neglected addressing these issues. In recent times, there is an emerging scholarship in human rights that has advanced a strong critique on the existing human rights practices for this failure.

Theoretical insights drawn from this critical literature informs the analysis of this thesis. The mainstream human rights discourse – that does not conceive socio-economic inequalities as a human rights concern – is incompetent to develop a human rights response to urban inequalities since such inequalities does not fall into its scope. Therefore, from a human rights perspective, it is important to broaden the scope of the existing framework in a manner that takes socio-economic inequalities into consideration. In other words, if we are to address socio-economic inequality as human rights concerns, the way we think about human rights should also change; there has to be a renewed framework of human rights that takes both horizontal and vertical inequalities into account.

In this context, I will analyze how the recognition of the right to the city could enrich such an endeavor of broadening the human rights discourse. I intend to identify dimensions of the right to the city that has the potential of nurturing a broader vision of human rights.

In developing this analysis, the thesis is organized according to the following structure. Chapter Two provides an overview of the nature of the urban inequality problem in developing countries. Drawing from urban sociological literature, the chapter will explore how socio-economic inequalities are structurally intertwined with urbanization in the third world. Further, the chapter will explore the relationship between urban governance and urban inequalities; and outline the manner how global neo liberalism that shapes contemporary governance has resulted in the exacerbation of inequalities in the urban space.

The Third chapter outlines the theoretical framework the thesis is based on. In this chapter, I will explore the main themes discussed in the critical literature on human rights and socio-economic inequality. The chapter will evaluate how different scholars identifying the failure of human rights in addressing vertical inequalities have approached the issue in different ways. The chapter differentiates between two strands of thought; one treating the human rights framework as a corpus that already entails the notion of socio-economic equality, and thus understanding the failure of the existing human rights practice as a result of the failure of the human rights community to conceive human rights in its fullest sense. The second strand is more critical on the potential of human rights in addressing the problem; and argues that the minimalist nature of human rights prevents it from being an instrument against inequality. Critically engaging with both these strands, I will draw several theoretical conclusions; and this framework will serve as the theoretical outline for the thesis.

Chapter Four introduces the idea of the right to the city and explores its dimensions. In this chapter, I will discuss how the right to the city is conceptualized; both as a politico-philosophical category and as a legal category. The political and philosophical notion was framed by Henri Lefebvre; and later

developed by critical urban theorists. The attempt to frame the right to the city in legal terms is a recent phenomenon; starting from the World Charter for the Right to the City (2005) adopted by social movements as a civil society declaration. The chapter will also explore how the notion is framed in the United Nations New Urban Agenda (2016) that has been endorsed by a resolution adopted by the United Nations General Assembly.

The Fifth Chapter will discuss how the right to the city is implemented in the local level by referring to the example of Brazil as a case study. The chapter will analyze provisions of the Brazilian constitution and the City Statue (2001) to elaborate how Brazil has attempted to develop a legally binding model to ensure the right to the city. The main dimensions of the new urban order Brazil aimed to realize will be discussed in detail.

Drawing from all the themes discussed in earlier chapters, in the Sixth Chapter I will analyze the transformative potential of the right to the city in relation to human rights and urban governance. This chapter will outline the elements of the right to the city that I identify as important in nurturing a broader vision of human rights that treats socio-economic inequalities as human rights concerns. Further, in the chapter, I will evaluate how these elements would contribute in challenging the exclusive nature of urban governance practices in developing countries.

1.3 Research Objectives and Limitations

The main objective of the study is to contribute to the critical literature examining the relationship between human rights and socio-economic inequalities. This matter is an ongoing debate; and the discussion is enriched by the contributions of human rights scholars such as Philip Alston, Samuel Moyn, Gillian MacNaughton, Julia Dehm and so forth. One of the focuses of this debate has been understanding ways how issues pertaining to socio-economic inequalities could be brought into the human rights discourse. The thesis aims to contribute to this literature by analyzing the radical nuances the right to the city represents. The thesis intends to demonstrate that the concept could be useful for the initiative striving to widen the conceptual horizon of human rights.

There are several limitations to the study. First, though urban inequality is a problem evident both in the Global North and the Global South, I will focus on the latter in explaining the nature of the problem. The right to the city is a particular approach that attempts to discuss the matter of human rights in the local level; and 'human rights cities' is another approach that has become popular in the international fora in the recent times. The difference between these two approaches is while the latter focus on ensuring human rights in its conventional form in the local level; the former represents a more radical approach of redefining rights by introducing new dimensions to the human rights discourse[4]. In a

[4] Eva Garcia Chueca, 'Human rights in the city and the right to the city: Two different Paradigms Confronting Urbanisation' in Barbara Oomen, Martha F Davis, Michele Grigolo (eds) *Global Urban Justice: the Rise of Human Rights Cities* (Cambridge: Cambridge University Press, 2016).

geographical sense, the right to the city approach is widely referred to in the context of developing countries[5]. Therefore, in demonstrating the problem of inequality, the focus will be on developing countries; although the observations I make *vis-à-vis* the right to the city might also have relevance to the context of Global North.

Second, in examining the critique on human rights and socio-economic inequalities, the discussion will be limited to explore the ideas presented by a selected number of scholars due to space constraints. I am mindful that there is a broader literature on the relationship between human rights and neo liberalism; particularly concerning the view that the two currents are closely intertwined. Arguments presented by scholars such as Susan Marks and Naomi Klein are briefly mentioned in the theoretical section; but would not be explored in detail.

Third, in outlining the main aspects of the right to the city, I wish to avoid discussing the connexion between the original Lefebvrean notion of the right to the city and the concept that has been recognized by pragmatic instruments such as the World Charter for the Right to the City. There is a critique on this relationship in academic literature on the ground that the former lacks the radical spirit of the original conception; and to that extent has been co-opted by the status-quo. Though I briefly refer to this controversy in chapter 4, the theme is not dealt in depth since this is a different topic – obviously an important one - that has to be addressed separately.

Finally, in exploring the right to the city in practice, I refer to a particular chosen scenario; Brazilian urban reform. There are several other Latin American countries; for example, Mexico and Ecuador that have provided some form of legal recognition to the right to the city[6]. However, the discussion is limited to Brazil because a) compared to other countries, it has developed an extensive legal framework to ensure the right so far; and b) there exists a wide research scholarship on the Brazilian experience that allows us to look at the scenario in more depth. Further, the discussion on urban reform in Brazil will be largely on the conceptual dimension. Though some of the practical aspects Brazil experienced in implementing urban reform laws are referred to in the study, the main focus will be to identify the main dimensions of the legal framework as it is formulated.

1.4 Methodology

The thesis is a qualitative study and draws from a wide range of primary and secondary sources. The main primary sources are reports of the UN Habitat; the specialized UN agency for human settlements, instruments defining the right to the city; which includes the World Charter for the Right to the City, UN New Urban Agenda, the Constitution of Brazil and the City Statute. Secondary sources encompass academic writings; notably the writings of Mike Davis on third world urbanization, Philp Alston,

[5] ibid.
[6] See Mexico City Charter for the Right to the City (2010) and Article 31 of the constitution of Ecuador (2008) referring to the right to a dignified city.

Samuel Moyn, Gillian MacNoughton and Julia Dehm on the relationship between human rights and inequality and writings of critical urban theorists; Henri Lefebvre, Peter Marcuse and David Harvey. Further, existing research literature on Brazilian urban reform will also be referred as secondary material.

1.5 Definition of Socio-Economic Inequality

Since the main scope of the thesis is socio-economic inequalities in the urban space, at the outset, it would be important to define the precise meaning of socio-economic equality to avoid confusion. In the thesis, terms such as socio-economic inequality and material inequality are interchangeably used to refer to the same phenomenon; inequality in terms of income, wealth and other social attributes associated with wealth. Socio-economic inequalities are vertical inequalities as opposed to horizontal inequalities. Horizontal inequalities refer to inequalities between 'social, ethnic, linguistic or other population groups'[7]. Inequalities between 'culturally defined or socially constructed groups' such as groups based on gender, race, caste, religion or sexuality are defined as horizontal inequalities[8]. These inequalities are mainly the outcome of discrimination and historical disadvantage. Treaties such as the Convention on the Elimination of Racial Discrimination (CERD) and the Convention on the Elimination of Discrimination against Women (CEDAW) specifically addresses some forms of such inequalities[9]. Further, non-discrimination provisions in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) affirms that rights enshrined in those instruments must be ensured without any discrimination based on any of the prohibited grounds.

Vertical inequalities refer to class or income group-based hierarchies. Economic inequality indicates range of inequalities 'relating to the distribution of income (from labour to capital) or wealth (such as financial assets or land) between individuals in a society'[10]. This is generally measured using the Gini Coefficient which determines how the income or wealth is distributed among various income groups in a society. The notion economic inequality is closely related to the idea of social inequality; which may refer to inequalities in distribution of various social indicators; such as 'political power, health, education or housing among individuals or households'[11]. Economic inequality often results in and reinforces social inequalities. For example, people with higher income and their family members may have more access for political power, better education and so forth; compared to individuals belonging to lower income groups[12]. However, the distinction between vertical and horizontal inequalities should

[7] Gillian MacNaughton, 'Vertical inequalities: are the SDGs and human rights up to the challenges?' [2017] 21:8 The International Journal of Human Rights, 1050 1051.
[8] ibid.
[9] ibid.
[10] Philip Alston, Report of the Special Rapporteur on Extreme Poverty and Human Rights to the United Nations Human Rights Council (27 May 2015) 5.
[11] ibid 6.
[12] ibid.

be understood as a relative distinction since these inequalities often overlap with each other. Historical disadvantage and discrimination might play an influential role in placing certain individuals in lower tiers of socio-economic hierarchies.

In human rights scholarship, there are two prominent approaches to define the notion of equality; equality defined as *equality of opportunity* and *equality of outcome*. The former suggests that all people should be treated identically. For example, no one should be differently treated in accessing education or healthcare. This approach does not necessarily embrace equality in terms of outcome; once equal opportunities are provided, how these opportunities are utilised depends on individual merit and accordingly there can be inequalities in terms of outcome. On the contrary, equality of outcome approach defines equality in relation to realized outcomes. These outcomes can be measured along dimensions such as education, health, income, wealth and so forth[13]. However, the division between the two approaches is also relative since the two notions are inter-related. In order to have equal opportunities - if similar choices should be available for all the individuals - there must be a certain level of evenness in terms of income and wealth since these shapes the access to opportunity. People will not have similar choices if there are larger disparities in income and resources that are crucial in pursuing their choices[14]'. In interpreting equality human rights treaty bodies have embraced the notion of substantive equality; recognizing the influence of structural sources that results in inequality and indirect forms of discrimination[15].

However, most of these interpretations are largely given in the context of horizontal inequalities; not in relation to socio-economic inequalities. This failure to refer to the latter is a part of the problematic this thesis attempts to address.

[13] ibid 9.
[14] ibid 11.
[15] Committee on Economic Social and Cultural Rights, General Comment N. 16 on Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights ¶ 7,8

Chapter 2: The Problem of Urban Inequality in the Third World

2.1. Significance of Third World Urbanization

In the recent decades, countries throughout the developing world are experiencing an unprecedented wave of urbanization. The numbers reveal the astonishing nature of this process. There were 86 cities with a population of one million in 1950[16]. By 2016, this was increased to 512; and by 2030 there will be 662 cities having a population of at least one million[17]. The bulk of this urban population is concentrated in third world cities. The combined number of urban inhabitants in China, India and Brazil is roughly equal to the entire population of Europe and Northern America[18]. Megacities with a population excess to 10 million and Hypercities with a population more than 20 million are expanding. In 2016, of the 31 Megacities in the world, 24 were situated in the Global South[19]. The urban phenomenon is not only limited to the emergence of Megacities. This is supplemented by expansions of smaller cities with increased rural migration; and also, urbanisation of the rural areas. While the number of official cities in China has increased from 193 to 640 since 1979; the growth of secondary cities such as Tijubana, Curitica, Temuco, Salvador and Belen have become a striking phenomenon in Latin America[20].

Mike Davis, in his celebrated book 'Planet of Slums' provides a periodization of urbanization patterns in the third world[21]. The first phase of the urban expansion emerged following decolonization; with newly independent governments in most developing countries lifting the barriers on entry to metropolitan areas that were maintained by colonial regimes. However, the 'big-bang' of urban population which characterizes the emergence of modern-day urban expansion begun in a distinct second phase; starting from late 1970s. According to Davis, third world urbanization both 'recapitulate and confound' the precedent of nineteenth and early twentieth century urbanization in Europe and Northern America[22]. The emergence of great cities in the Western world following the industrial revolution is a result of the expansion of industries and proliferation of industrial cities. In the third world, especially in East Asia, a similar pattern occurred in the latter half of the Twentieth Century. For instance, in China, South Korea and Taiwan the growth of export-oriented industries and the influx of

[16] Mike Davis (n1).
[17] United Nations Department of Economic and Social Affairs, *The World's Cities in 2016 – Data Booklet* (United Nations, 2016) 2.
[18] Davis (n1) 72.
[19] (n17) 4.
[20] Davis (n1) 73.
[21] Mike Davis, *Planet of Slums* (London, New York: Verso, 2006).
[22] ibid 11.

foreign investment were influential in driving larger populations to cities seeking employment in these industries[23].

However, in most developing countries, urbanization is decoupled with industrialization; large scale rural migration has taken place in the absence of significant growth in manufacturing industries in cities. This presents a paradoxical scenario. For instance, in African countries such as Tanzania, Congo, Gabon, Angola and so forth; the annual urban population growth was around 4 to 5 per percent per annum in 1990s although the growth rate remained low in urban economies[24]. Though the 'pull' of the cities were drastically weakened due to economic depression and debt crisis, the impact of 'pushing' factors of population from rural to the urban; such as the collapse of rural agriculture due to food imports, mechanization of agriculture and the substitution of small-holder farmers by large scale agri-businesses were strong; so that rural people affected of these changes had to migrate to cities albeit the absence of urban economic growth[25]. Other factors such as natural disasters and civil war also contributed in increased migration. The result of this mismatch between lack of urban growth and increased rural migration has been the expansion of urban poverty. The unprecedented growth of third world urban population has created a planet prevalent of urban poverty; a *'planet of slums'.*

2.2 Urbanization and Socio-Economic Inequality

Nonetheless, the 'slum city' is only one aspect of contemporary urbanization. Modern-day third world cities are also inscribed with large scale socio-economic inequalities; increased division between haves and have-nots. The urban space is dominated by the emergence of new forms of 'social apartheids'; in which the privileged 'included' having access to a better urban life while the disadvantaged 'excluded' are confined to precarious living conditions. For instance, Mumbai, the financial centre of India represents a fine example for this contradiction. The city is the home for the slum *Dharavi*; the most populated informal settlement in India, but also to an increasing number of emerging luxury apartments, large shopping malls and skyscrapers. This extreme disparity is not only a Mumbai scenario but a phenomenon observable in most third world cities.

As David Harvey explains, modern urbanization is inherently linked with the logic of capital accumulation[26]. The logic of capitalism requires surplus capital to be constantly reinvested in order to avoid crisis[27]. Thus, capital constantly seeks for new avenues to invest the surplus; such as expanding foreign trade, promoting new products and life styles, creating new credit instruments and promoting debt-financed state expenditure. Large investments on urban infrastructure and expanding the urban sphere is another such way modern capitalism finds a source of reinvestment. With the advent of

[23] ibid 12-13.
[24] ibid 14.
[25] ibid 16-17.
[26] David Harvey, *Rebel Cities; From the Right to the City to the Urban Revolution* (London, New York: Verso,2012) 3-26.
[27] ibid 5.

globalisation this endeavour has become global. Surplus capital is now invested not only in cities in the Global North; but also, in third world cities in an unprecedented manner[28]. For example, China is one of the third world countries that has been massively transformed due to large global capital inflows. Debt-financed infrastructure projects; damns, highways and so forth has transformed the Chinese landscape. The other main sphere the surplus is absorbed is the real estate sector. In the recent few decades, many third world cities; Mexico City, Santiago, Mumbai and so forth have witnessed a massive boom in construction; mainly benefiting the rich and affluent middle classes[29].

The UN Habitat has recognized urban socio-economic inequalities as a pressing issue urban development should tackle. According to the organization, 75 percent of world's cities have higher level of income inequalities than two decades ago[30]. In other words, the expansion of urbanization in the last two decades has also resulted in increased income inequalities. The paradox is inequalities are in rise even in cases where economic growth is reported. For instance, Asia has been experiencing economic growth; especially due to the growth in China and India. Nevertheless, a study conducted by UN Habitat in a sample of seven Asian cities has found out that, from 2000 to 2014 inequalities have grown in most of the selected cities; which includes Hong Kong, Colombo, Delhi, Jakarta and Bangkok[31]. According to the Habitat, 'Never before have the cities of this world appeared so starkly as they do today as nodes of economic, social, cultural and political links within self-contained, if ever expanding spaces'; and also 'never before [..] these resources been so inequitably distributed that 'the urban divide' between rich and poor has never looked so wide[32]'.

Urban inequalities are reflected in many forms of exclusions. The UN Habitat identifies four forms of such exclusions; exclusion from socio-economic space, exclusion from collective socio-cultural space, exclusion from political space and spatial exclusion[33]. Socio-economic exclusion refers to the scenario that the urban poor are excluded from access to numerous social rights such as adequate standards of living, housing, education, healthcare etc. The bulk of urban poor are stuck in the informal economy defined by low income and low productivity. Most slum dwellers in developing countries '..are in low paying occupations such as informal jobs in the garment industry, recycling of solid waste and various home-based enterprises'.[34]

Low income prevents these populations from meaningful and equal access to other social services crucial for urban life. For example, low income groups are concentrated in informal settlements because

[28] ibid 11.
[29] ibid 12.
[30] UN Habitat (n2) 69-85.
[31] ibid 75.
[32] ibid 72.
[33] UN Habitat (n 2) ch 4.
[34] UN Habitat, *The Challenge of Slums: Global Report on Human Settlements* (UN Habitat,2003) xxvi.

slum communities provide housing and other services for a low cost[35]. Researches show that most unequal health differentials now exist not between cities and villages but between urban middle classes and the poor[36]. Health issues affect differently on different communities; those who cannot afford quality healthcare are disproportionately affected. As Davis points out '... in Quito infant mortality is three times higher in slums than in wealthier neighbourhoods; while in Cape town tuberculosis is 50 times more common among poor blacks than amongst affluent whites'[37].

The informal sector has always been a part of developing economies; but with the advent of globalisation the informality drive has become even more powerful. In their study on the impact of economic liberalization and Structural Adjustment Policies on Latin American urban class structures, Portes and Hoffman finds out that since 1970s the number of public sector employees and formal sector workers have declined in every country in the region[38]. They point out that a significant portion of the 'urban petty-bourgeoise'; persons having their own small-scale enterprises in the informal sector are people laid off due to privatisation of public enterprises and the collapse of private formal sector enterprises in the face of pressures of global competition. Liberalization in labour markets has promoted informal labour arrangements in the formal sector; with contract work, part time work and other non-standard forms of employment taking precedence over standard full-time work[39].

Spatial exclusion refers to the phenomenon in which poorer sections in cities are segregated into distinct communities; while affluent sectors living in gentrified neighbourhoods acclaiming the best attributes of city life. Massey and Denton define residential segregation as 'the degree to which two or more groups live separately from one another, in different parts of the urban environment[40]'. Throughout the history cities have been socially stratified formations[41]. However, some researchers suggest that in pre-modern cities; such as in ancient Rome, medieval Europe and China, spatial stratification was less evident compared to modern cities since in the former members of different classes were living in relative spatial proximity[42]. With the advent of industrial revolution; the elite had the opportunity to distance themselves from the plebeian elements of the city due to the progress in transportation technology. Today, the advancement of communication and information technologies have further contributed in expanding this seperation[43].

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[35] ibid 67.
[36] ibid.
[37] ibid.
[38] Alejandro Portes and Kelly Hoffman, 'Latin American Class Structures: Their Composition and Change during the Neoliberal Era' [2003] 38:1 Latin American Research Review 55.
[39] Jan Breman and Marcel van der Linden, 'Informalizing the Economy: The Return of the Social Question at a Global Level' [2014] vol 45 issue 5 Development and Change 920.
[40] Douglas Massey and Nancy Denton, 'The Dimensions of Residential Segregation' [1988] 67 Social Forces 281, 282.
[41] UN Habitat (n 2) 62.
[42] ibid.
[43] ibid.

Statistics on spatial divide in third world cities are appalling. For example, in Dhaka, 70 percent of the population is concentrated in a narrow space which amounts to only 20 percent of the total surface area in the city[44]. In Bombay, the poor are concentrated on 10 percent of the urban land while the affluent live in comfort with open areas occupying the rest. Nairobi is another extreme example for this tendency; with 360 inhabitants for one square kilo meter live in affluent areas while in poorer areas the figure is 80,000 inhabitants for the same space[45].

One aspect of urban segregation is the increased emergence of rich neighbourhoods; 'gated communities'. Davis refers to affluent gated communities in third world cities as 'off worlds' separated from the world of poverty[46]. Since 1990s the emergence of exclusive suburbs in cities in the developing world has increased drastically. Thus, in Cairo there are Egyptian equivalents of Beverly Hills; affluent private suburbs 'whose inhabitants can keep their distance from the sight and severity of poverty and the violence and political Islam which is seemingly permeating the localities[47]'. In Bangalore, there are wealthy suburbs complete with Starbucks and multiplexes; apartment blocks with their own swimming pools and health clubs, walled-in private security and exclusive club facilities[48]. In their study on demographic patterns in Buenos Aires, Groisman and Suarez point out that, from 1990 to 2001, the number of working- and middle-class houses in the metropolis has decreased in more than 10 percent, while the number of luxury houses have multiplied fourfold[49].

The opposite of emerging affluent gated communities is the expansion of informal settlements. The numbers of people living in slums in developing countries has sharply increased; from 689 million in 1990 to 880 million in 2014[50]. In 2001, UN Habitat estimated that 31.6 percent of total urban population in the world lives in slums[51]. In certain third world cities, entire populations are concentrated in informal settlements. The most extreme examples are Ethiopia, Chad, Afghanistan and Nepal where over ninety percent of the urban population living in slums[52]. In the Subcontinent, massive slum communities are part of the urban landscape. In the five large cities in the region; Delhi, Karachi, Dhaka, Calcutta and Mumbai the presence of around 15,000 slum communities are estimated with a number of 20 million inhabitants[53].

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[44] Davis (n 21) 95.
[45] ibid.
[46] ibid 115.
[47] ibid.
[48] ibid 116.
[49] Fernando Groisman and Ana Lourdes Suárez, 'Residential Segregation in Greater Buenos Aires' in Bryan R Roberts and Roberts H Wilson (eds) , *Urban Segregation and Governance in the Americas* (New York: Palgrave Mac Millan, 2009) 41.
[50] ibid 14.
[51] ibid 13.
[52] Davis (n1) 76.
[53] ibid.

Housing is a crucial issue in urban life because it is not only a matter about shelter. The condition and location of housing determines many other outcomes of a persons' life; access to public services, employment, social and cultural development and so forth. Housing determines 'the mutual relationship between every single human being and surrounding physical and social space[54]'. The life in informal settlements are intertwined with numerous health and environmental problems. Features associated with poor housing; such as 'poor sanitation conditions, lack of waste disposal facilities, the presence of vermin, poor indoor air quality due to poor ventilation' are causes of health issues[55]. As the UN-Habitat estimates, only 37 percent urban households in the developing world have access to pipe water and only 15 percent to sewerage[56]. Further, slums are generally located in geographical areas which are more prone for environmental harm; both natural and 'unnatural' disasters[57]. For instance, many slum communities are located in government land associated with transportation infrastructure; railroads, land attached to highways and so forth. The danger posed by passing vehicles are acute; especially for children[58]. Most *favelas* in Brazilian cities located in hillside are catastrophically prone to slope failure and landslides[59]. The term *'classquake'* is coined by Geographer Kenneth Hewitt to explain the disproportionate affect environmental hazards are having on poorer communities[60].

2.3 Urban Inequality and Urban Governance

The issue of urban inequality is intertwined with the matter of urban governance. Different ways the urban space is governed could lead to contrasting results; either it could be used as a tool to contain inequalities; or it also could result in further exacerbating inequalities. The City is not only a spatial entity; but also, a political entity. It has never been a fixed 'object'; it has always been a field of tensions and therefore a contested order[61]. It is a battleground 'through which social groups define themselves, impose their interests, conduct their battles and articulate rules, rights and principles'[62]. In the contemporary age of economic globalisation, urban governance is largely shaped by the notion of neo liberal development. The global shift of economic thinking which occurred after the collapse of the post-war Keynesian welfare state model in 1970s has profoundly changed the reasoning of policy making both in developed and developing countries. Neo liberalism is a form of 'free market fundamentalism[63]'; attributing primacy for the functioning of the markets and advocating for minimal interference of the state in economic activities.

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[54] UN Habitat (n 2) 49
[55] UN Habitat (n 34) 74
[56] UN Habitat (n 34) 59
[57] Davis (n 21) ch 7.
[58] ibid 69.
[59] ibid 122.
[60] ibid 126.
[61] Niccolò Cuppini, 'The Globalized City as a Locus of the Political: Logistical Urbanization, Genealogical Insights, Contemporary Aporias' in Theresa Enright and Ugo Rossi (eds) *The Urban Political: Ambivalent Spaces of Late Neo Liberalism* (Palgrave MacMillan, 2018) 68.
[62] ibid 70.
[63] Joseph Stiglitz, *Globalisation and its Discontents* (New York: W.W. Norton, 2002).

Most developing countries entered into the phase of neo liberalism in 1980s through submitting to structural adjustment programs prescribed by International Financial Institutions following the debt crisis these countries had to endure. Prior to this accession, developing countries tend to follow a distinct path of development demanding a fundamental restructuring of international economic relations; as manifested in the proposal for a New International Economic Order (NIEO)[64]. In addition to the demand for economic independence, in most developing countries, this era was also characterized by a certain commitment towards egalitarian objectives; with governments implementing numerous redistribution policies[65]. This egalitarian orientation was also resonated in formulating urban policies. For instance, Mark Davis explains how progressive nationalist leaders in newly independent developing countries; such as Nehru, Sukarno, Nassar and Nyerere implemented ambitious public housing programmes targeting the urban poor[66]. Post-independent Algeria implemented free education and healthcare policies and provided rent subsidies for lower income communities; while in Brazil, President Jao Goulart advocated an 'urban new deal'[67].

However, the integration of the third world to the global neo liberal hegemony has significantly weakened such tendencies. In the urban context, people in these countries are experiencing the entrenchment of the 'neo liberal city[68]'. As Margit Mayer explains, there are two fundamental fault lines underpinning neo liberal urban affairs. First, the strong prioritization the neo liberal city ascribes to 'growth politics' – 'investments in new city centres, mega projects for sports and entertainment, the commercialization of public space and the concomitant intensification of surveillance and policing.' Second, the neo liberalization of social and labour policies; characterized by the dismantling of the welfare state[69].

Prioritization of Growth Politics: The fundamental premise of neo liberal urban policy is treating redistribution of wealth to less advantaged neighbourhoods, cities and regions as futile, and instead; focusing on channelling resources to 'entrepreneurial' growth poles[70]. This is a spatial form of the trickle-down assumption; the assumption suggesting that facilitating financiers and developers to enrich themselves will, in the long run, benefit the poor with wealth being trickled down. This line of reasoning leads policy makers to prioritize commercial interests; often the interests of big businesses over the

[64] United Nations General Assembly Declaration on the Establishment of a New International Economic Order Resolution 3201 (S-VI) 1974.
[65] Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge Massachusetts: The Belknap Press of Harvard University Press, 2018) 89-119.
[66] Davis (n 21) 61
[67] ibid 62
[68] Margit Mayer, 'The Right to the City in Urban Social Movements' in Neil Brenner, Peter Marcuse, Margit Mayer (eds) *Cities for People not For Profit* (London, New York: Routledge, 2012).
[69] ibid 68-69.
[70] Harvey (n 26) 29.

social needs of inhabitants. In developing countries, the most brutal expression of this contradiction is enforced evictions of low-income communities from the metropolis. The rationale behind enforced eviction is to clear high valued land occupied by the urban poor and to release them for commercial activities. David Harvey refers to this process of urban reconstruction as 'creative destruction[71]'. As Harvey explains, creative destruction is nearly always a process with a class dimension; with the most marginalized and the most disadvantaged likely to be affected from dispossession.

Enforced evictions are often implemented under sugar-quoted themes; such as 'progress', 'beautification' and even in the name of 'social justice for poor'. However, the real drive of these projects is to redraw urban boundaries for the 'advantage of landowners, foreign investors, elite houseowners and middle-class commuters'[72]. In Delhi, from 2004 to 2007 45,000 houses were demolished under 'slum clearance' schemes. This is a sharp increase in evictions compared to 51,461 houses that were demolished from 1990 to 2003[73]. The eviction of 150,000 persons from settlements in Yamuna Riverbank in 2003 is a drastic example for the scale of evictions in India. Eviction was carried out amidst violence; suppressing the resistance of affected communities. Most of the persons evicted were relocated in a new peripheral slum 20 kilometres away and this relocation has worsened their living conditions because of the starkly increased cost of commuting to work after relocation[74]. 'Planet of Slums' documents a number of examples from all over the third world of enforced clearance of informal settlements. For instance, in Jakarta, the Mayor implemented a slum clearance project in 2001, with the support of developers, big businesses; and accordingly, 50,000 slum dwellers were evicted. 35,000 pedicab drivers lost their jobs. Stalls of 21,000 street vendors were demolished and hundreds of street musicians were arrested[75]. The Mayor had an ambitious plan to transform Jakarta in to a 'second Singapore'.

Enforced evictions are often accompanied with police repression and violence; without leaving space to right to appeal. In most instances, compensation is not paid; even when paid it is not adequate. The situation is further appalling in countries without democratic institutions. For instance, in China, in 1995 the military was deployed to demolish informal settlements in Zhejiang located in Beijing. 18,621 residents were deported, and 9917 homes were destroyed[76]. In countries such as India 'special agencies' unaccountable to the electorate are created for urban development, through which slum clearance is implemented[77]. Further, the Indian judiciary has shown the tendency of looking at informal settlements

[71] ibid 16.
[72] Davis (n 21) 98.
[73] Gautam Bahn, 'This is no Longer the City I once Knew: Evictions, the Urban Poor and the Right to the City in Millennial Delhi' [2009] 21 Environment and Urbanization 127.
[74] Davis (n 21) 100.
[75] ibid 113.
[76] Davis (n 21) 112.
[77] ibid, 100.

through a narrow legalistic lens; defining slum dwellers as 'trespassers'. Thus, the Indian Supreme Court has denounced providing alternative settlements for evicted persons as similar to 'giving a reward to a pickpocket'[78].

The Decline of the Welfare State: Further to prioritization of growth politics, the neo liberal ideology advances a vision of restructuring the role of the state. Markets are seen as the best tool for resource allocation whilst the state is expected only to facilitate markets and to withdraw from direct intervention. Policies informed by this rationality such as privatization of public services and cuts on public spending were followed intensively in the last few decades throughout the world. For instance, water and sanitation services were privatized in 90 countries, 87 state or provincial jurisdictions and in 504 local government during the period of 1990-2011[79]. The negative impact of neo liberal policies on urban poverty is a fact that is widely acknowledged today. In their report on third world slums, UN Habitat notes that the 'main single cause of increases in poverty and inequality during the 1980s and 1990s was the retreat of the state[80]'. The impact debt-conditionality is having on socio-economic rights has also drawn the attention of the UN Committee for Economic Social and Cultural Rights (UN-CESCR)[81].

Several examples on how the retreat of the state impacts urban inequalities by further marginalizing the urban poor is worth discussing. The IMF provided financial assistance to Argentina through a number of agreements starting from 1970s; and the IMF required Argentina *inter alia* to reduce public spending, implement wage controls and impose fees for state provided services[82]. These policies resulted in the decline of public sector employment, deterioration of real wages for workers. In 1977-78 government expenditure on healthcare and education was reduced from 50 percent. The price of thirteen public utility services; including gas, telephone, water, rail fares, electricity and metro fares were raised in the average of 405 percent during this period[83]. The workers and the urban poor were hardly hit due to the austerity measures and led to a series of anti-IMF demonstrations in the country. In Africa IMF dictated SAPs resulted in 'capital flight, collapse of manufactures [...] drastic cutbacks in urban public services, soaring prices and a steep decline in real wages[84]'. For example, in Dar-es-salaam the expenditure on public services per person declined in a rate of ten percent each year and was amounted to a sharp decline of the role of the local state[85]. Following the implementation of IMF prescribed economic reforms in Zimbabwe in 1991, increasing cost of living due to reduction of state subsidies increased

[78] Usha Ramanathan, 'Illegality and the Urban Poor'[2006] vol 41Issue 29 Economic and Political Weekly 22.
[79] UN Habitat (n 34) 15.
[80] Davis (n 21) 154.
[81] CESCR, 'General Comment No. 2, International Technical Assistance Measures Article 22 (1990).
[82] Margaret Conklin and Daphne Davidson, 'The I.M.F. and Economic and Social Human Rights: A Case Study of Argentina, 1958-1985' [1986] vol 8 no 2 Human Rights Quarterly 227.
[83] ibid 252.
[84] Davis (n 21) 155.
[85] ibid.

malnutrition; and also, compelled children to leave school in order to seek employment mainly in the informal sector[86].

The repercussions of the withdrawal of the state is clearly evident in the housing sector. The approach on housing that took precedence following economic liberalization is known as the 'enabling approach'. This approach limits the government's role in housing to focus on developing regulatory framework on factors related to housing; land, finance, infrastructure and so forth; and leaves its functioning to the private sector; communities and households[87]. Assessing the overall impact of this approach, the UN Habitat concludes that though it has been beneficial to high income and middle-class sections, for the increasing number of urban poor this has disabled the access to adequate housing[88]. In the case of water supply, in 1997, two larger privatization schemes were implemented in Jakarta and Manila[89]. This was a process involving several vested interests; international water companies partnered with wealthy and politically influential local groups to obtain contracts; and the World Bank providing financial and technical assistance. In the financial support agreement signed with the World Bank, Indonesia committed to treat water as a tradable economic good and to ensure private sector participation in the industry[90]. Following privatization, there were tensions between water companies and the governments since the companies were urging on rising prices constantly. On the other, there were criticisms on equitable distribution of water services on the ground that low income groups were disadvantaged in the process of distribution. Further, in 2003, Tanzania entered into an agreement with the British corporation Biwater to privatize water supply in Dar-es-salaam. This was followed by a sharp increase of water prices, and the urban poor who could not afford the prices had to rely on unsafe sources to obtain water[91]. Social activists complained that water supply is channelled towards the affluent neighbourhoods and 'unprofitable areas' where the poor reside are neglected[92]. In addition to these dynamics, the negative effect privatization schemes having on other social services; such as healthcare, education and sanitation resulting in the exclusion of poor sections have been widely documented in numerous studies[93].

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[86] ibid 161.
[87] UN Habitat (n 2) 50.
[88] Ibid, 51
[89] Teti Argo and Aprodicio, A. Laquian, 'Privatization of Water Utilities and Its Effects on the Urban Poor in Jakarta Raya and Metro Manila' Conference paper presented in : Forum on Urban Infrastructure and public service delivery for the Urban Poor, Regional Focus: Asia, sponsored by the Woodrow Wilson International Centre for Scholars and the International Institute of Urban Affairs, India Habitat Centre, New Delhi, June 2004.
[90] ibid
[91] Davis (n 21) 146.
[92] ibid.
[93] *See* Asa Cristina Laurell and Oliva López Arellano, 'Market Commodities and Poor Relief: The World Bank Proposal for Health' [1996] volume 26 International Journal of Health Services 1; Meredith Turshen , *Privatizing Health Services in Africa* (New Jersey: Rutgers University Press, 1999); John S Benson, 'The Impact of Privatization on Access in Tanzania' [2001] 52(12) Social Science and Medicine 1903.

All the examples discussed above demonstrate how the particular mode of urban governance which is dominant in our times; the neo liberal governance model contributes for the escalation of urban socio-economic inequalities by subordinating the interests of the poor to the interests of the capital; and also dispossessing poorer sections through withdrawal of the state from its social role. The interests of popular classes are either excluded or not sufficiently reflected in urban decision making. Urban governance has become an elitist endeavour, closely allied with powerful business interests; while largely neglecting the aspirations of the economically disadvantaged groups. Understanding this interlinkage between urban governance and urban inequalities is crucial in developing an effective response to the latter. Addressing socio-economic inequalities in the urban space requires a fundamental change in the mode of urban governance; in terms of how urban regimes approach urban development and how urban decision making is structured.

Chapter 3: Human Rights and Socio-Economic Inequality: Theoretical Perspectives

3.1 Human Rights and Socio-Economic Inequalities: The Critical Literature

Understanding how international human rights law addresses socio-economic inequalities; or to what extent does it addresses the problem is a pre-requisite for any discussion on formulating a human rights response to urban inequalities. The rise of socio-economic inequalities in the last few decades has triggered an important discussion in the contemporary human rights scholarship regarding the potential of international human rights law in tackling the inequality problem. The problematic this critical scholarship addresses are centred around two main questions; first, has the international human rights discourse paid sufficient attention to the inequality issue; and second, whether human rights have the potential in addressing the issue by formulating a substantive response.

Progressive scholars treating rising inequalities as a serious issue of concern are in consensus that hitherto the human rights discourse has failed to address the inequality problem as human rights issue in a sufficient manner. However, there are disagreements on the reasons for this failure and on the potential of the human rights discourse in articulating an effective response. There are two broader positions in this discussion; one strand of thought argues that the human rights movement should attribute substantive attention to economic social and cultural rights ('socio-economic rights') to address the issue of socio-economic inequality; suggesting that the problem lies in the failure of the human rights movement to follow a holistic conception of human rights. The other strand is critical of the potential of human rights; even with the inclusion of socio-economic rights in serving a broader distributive justice agenda; due to the minimalist nature of the human rights discourse. In the following discussion, I focus on exploring some of the themes and perspectives forwarded in this critical scholarship.

a) Exclusion of socio-Economic rights

The UN Special Rapporteur on extreme poverty and human rights; Philip Alston has authoritatively raised the importance of addressing inequality; both in his writings and also in reports submitted to the UN Human Rights Council in his official capacity. His contribution is an example for the first strand of thought that I mentioned above. For Alston, extreme inequality is the 'anti-thesis of human rights'[94]. Although perfect economic equality might not be achievable; or even not be desirable, the prevalence of extreme inequalities contradicts with the notion of equality of opportunity. Those who are born in

[94] Philip Alston, Extreme Inequality as the Anti Thesis of Human Rights (Open Global Rights, August 27 2015) <https://www.openglobalrights.org/extreme-inequality-as-the-antithesis-of-human-rights/> (Retrieved on 28.03.2019).

economically disadvantaged families face many more hurdles in advancing their lives compared to those others coming from relatively wealthy backgrounds. This impairs the equitable realization of socio-economic rights such as right to health, education, water and so forth[95]. Alston also stresses the link between economic inequality and enjoyment of civil and political rights. The 'capture of the political process by powerful groups, and the exclusion of others' leads to 'laws, regulations and institutions that favour the powerful[96]'.

Despite these negative consequences the human rights community has largely neglected the issue of extreme inequality in their analytical and advocacy work[97]. In the UN human rights system different special rapporteurs have called for the attention on problems associated with the issue of material inequality in their reports; but little has been done to follow up on any of these studies[98]. Economic policies promoted by International Financial Institutions have contributed in exacerbating inequalities in countries; and despite the fact that these institution themselves in certain instances have acknowledged the negative implications of extreme inequality, they have yet failed to account such considerations as fundamental priorities[99]. This failure stems from the reluctance of powerful governments that control these organisations to consider inequality as a serious issue. Alston observes that when economic and financial issues are raised in human rights forums such as the Human Rights Council, these powerful states tend to invoke the argument that it is not the appropriate forum to deal with such matters and should be discussed elsewhere. And when human rights are raised in economic forums the same governments tend to argue that such issues have to be addressed in the Human Rights Council[100].

Further, the international human rights movement also has failed to pay sufficient attention to problems related with inequality. The unwillingness to treat socio-economic rights with the same importance of civil and political rights has resulted in this failure. Leading human rights organisations such as the Human Rights Watch and Amnesty International have demonstrated a reluctance in attending to issues related to violations of socio-economic rights and issues pertaining to extreme inequality. Their exclusive attention to a range of civil and political rights (within which they have done commendable work) unfortunately entails a downside; it has prevented them from addressing deeper structures and systems that sustain extreme poverty and inequality[101].

For Alston the human rights discourse has a larger role to play in raising extreme inequality as a human rights issue. Thus, the human rights community and also states should overcome their failure to address

[95] Alston (n 10) 18-19.
[96] ibid 12.
[97] ibid 4.
[98] ibid 23.
[99] ibid 22.
[100] Alston (n 94).
[101] Alston (n 10) 22.

this issue and rethink about its focus. On this basis, in order for the human rights community to address the inequality problem he proposes following recommendations[102].

First, the human rights community should formally admit that extreme inequality is incompatible with ensuring equal rights for all. Second, there has to be a commitment to design policies to reduce; if not eliminate extreme inequality. Third, socio-economic rights have to be recognized as central concerns. These rights remain to be reduced to a second-rank set of rights and in many contexts, these are marginalised, absent or half-heartedly taken aboard. Alston emphasises the need to treat socio-economic rights in equal footing with civil and political rights, since policies enhancing the realization of these rights can have an effect on reducing material inequality. Fourth, social protection floors should be ensured. This is essential in fulfilling the basic obligations *vis-à-vis* socio-economic rights. Alston approvingly cites examples of how social programmes providing benefits for poorer communities in Brazil has contributed in reducing levels of inequality in the country from1995 to 2004. He insists that the right to social security and adequate standards of living enshrined in the Universal Declaration of Human Rights (UDHR) requires the implementation of social protection floors. The sixth concern is the fiscal policy. The UN General Assembly in its Declaration on Social Progress and Development[103] has recognised the role fiscal system and government spending can play in equitable distribution and redistribution of income. The human rights community should recognise the interlinkage between tax policies and human rights realization. The 'regressive or progressive nature of a state's tax structure [..] affects levels of inequality and human rights enjoyment[104]'.

Seventh point Alston proposes is the importance of revitalizing the equality norm. Under international human rights law there is no standalone right to equality. However, human rights commentators have relied on certain provisions of the UDHR; the proclamation of the equal rights of men and women (the preamble), that all human beings are born free and equal in dignity and rights (art.1) and equality before law and equal protection of law (art. 7) to derive the norm of equality in the realm of material distribution. However, Alston observes that treaty bodies so far have failed to develop jurisprudence on the basis of providing these provisions a broader interpretation in a manner indicative of material equality. He makes following observations; One, article 3 of the International Covenant on Civil and Political Rights (ICCPR) asserting equal rights of men and women has not been given its 'fullest reading' in terms of access to resources. Two, the focus of treaty bodies to address non-discrimination by stipulating affirmative obligations has not accounted the dimension of distributive equality. The right to equality should be interpreted as entailing distributive equality and it will add substantively to the international human rights law jurisprudence. Finally, the Committee on Economic, Social and Cultural Rights (CESCR) apart from its general comments 'has done little in practice to explore what might be

[102] ibid 26-31.
[103] United Nations General Assembly Resolution 2542 (XXIV) 11 December 1969.
[104] Alston (n 10) 28.

involved in the prohibitions in article 2(2) of the ICESCR against discrimination based on *social origin, property or birth*[105]'.

Finally, Alston suggests that questions of resources and redistribution has to be a part of the human rights equation. So far, the issue of resource distribution and access to resources was not seen as relevant in assessing government compliance with international obligations *vis-à-vis* civil and political rights. Issues pertaining to access to resources have been relegated to the 'minor-league' discussions about socio-economic rights. In the socio-economic rights context, resource allocation is addressed, but state obligations are only extended to the extent of availability of maximum resources. Limits of resources are often invoked as an excuse for non-compliance with basic obligations. Thus, questions on resources and redistribution are artificially marginalized in main human rights debates.

In an overall sense Alston offers a reading to international human rights norms inviting us to see it as a framework that already entails the notion of distributive equality. The norm of socio-economic equality is *already there* in the human rights framework, but the human rights movement and official bodies have so far failed to take this in to account in an effective manner.

b) Neo Liberal Version of Human Rights vs *Human Rights as Such*

Despite its significance for framing socio-economic inequality as a human rights concern, a striking omission of Alston's account is the absence of any reference to neo liberalism; which is the political economic context in which inequalities in our times have expanded. Some other scholars sharing similar views to Alston's on the incompatibility between extreme inequality and human rights have attempted to foster a broader discussion taking the factor of neo liberalism into consideration.

MacNaughton and Frey opine that neo liberalism and human rights are contradictory discourses and thus human rights has the potential in contesting adverse effects of neo liberalism including extreme inequalities[106]. The neo liberal discourse and the human rights discourse are built on different and contradictory normative premises. The former is premised on the notion of individual freedom and to that extent advocates a diminished role for the state[107]. Further, it presumes that inequality is a necessity to achieve economic progress. Neo liberalism 'emphasizes personal responsibility and competition rather than social solidarity, private property rather than collective commons, and socio-economic inequality rather than redistribution[108]'. On the other hand, human rights norms enshrined in the UDHR and other human rights treaties are built on the premises of 'freedom, equality, solidarity and dignity'. These notions are embedded in article 1 of the UDHR which states; '.. all human beings are born *free* and *equal* in *dignity* and rights. They are endowed with reason and conscience and should act towards

[105] ibid 30.
[106] Gillian MacNaughton and Diane F Frey, 'Introduction' in Gillian MacNaughton and Diane F Frey (eds), *Economic and Social Rights in a Neo Liberal World* (Cambridge University Press, 2018) 1-24.
[107] ibid 5.
[108] ibid 6.

one another in a spirit of *brotherhood*'.

Neo liberalism which focuses on individual freedom and dignity stands in contrast to the notions of equality and solidarity that characterizes the human rights framework. The human rights paradigm differs from the neo liberal one since the former embraces a broader notion of human wellbeing in contrast to the narrow individualism promoted by the latter. The rights enshrined in international human rights framework are manifold. This includes; a) individual rights; such as the right to life and prohibition against slavery; b) family rights; such as recognition of the family as the 'fundamental group unit of the society and reference to adequate standard of living of workers and their families; c) collective rights; such as labour rights and rights of minority groups; d) society rights; such as the right to a government that represents the will of the people and e) global rights; the right to a social and international order to ensure full realization of all these rights[109].

This holistic conception of human rights calls upon the state to assume a larger responsibility; rather than limiting itself to promote markets[110]. Human rights attributes positive obligations on the state; and such obligations implies a significant redistributive role the state should affirm. Within such holistic paradigm, the state is not understood merely as an oppressive and an inefficient entity; instead a larger progressive intervention is expected in supporting conditions necessary to realize human rights for all. A human rights-based policy framework would be therefore be radically different from the trickle-down approach of wellbeing advocated by neo liberalism[111]. A number of other scholars have also referred to this tension between human rights and neo liberalism. For instance, Paul O'Connell argues that the two conceptions are irreconcilable; both in theory and practice[112]. There is an ontological difference in the way two paradigms view individuals, communities and question of human needs. Neo liberalism conceptualising the society as a 'battleground of atomised individuals competing with each other for self-maximization lacks any ethical element in the progressive sense'[113].Further, neo liberalism attempts to reconfigure the role of the nation state; defining the state as an entity devoid of social responsibilities subjecting social provisions to the profit motive[114]. These elements are in contradiction with the spirit of solidarity underlying the human rights conception and also the progressive role it expects the state to perform in fulfilling human rights. Further, referring to socio-economic rights in particular, Joe Wills outlines following discursive tensions[115]. First, neo liberalism views matters such as poverty and material deprivation as 'problems' to be addressed through technical solutions. But socioeconomic

[109] ibid 9.
[110] ibid.
[111] ibid 10.
[112] Paul O'Connell, 'On Reconciling Irreconcilables: Neo-Liberal Globalisation and Human Rights' [2007] 7 Hum. Rts. L. Rev 483.
[113] ibid 496.
[114] ibid 500.
[115] Joe Wills, 'The World Turned Upside Down: Neo-Liberalism, Socioeconomic Rights, and Hegemony', [2014] 27 LJIL 11.

rights approaches raise the notion that certain forms of such deprivation constitute 'human rights violations' and thus the state is obliged to take concrete measures to reverse these deprivations. Second, the neo liberal paradigm conceives goods and services mainly as commodities that have to be allocated privately through the market. On the contrary, socio-economic rights require goods and services vital for human flourishing and dignity; such as education, healthcare and so forth to be allocated on the basis of human need rather than ability to pay. The third is the tension between the minimal state advocated by neo liberalism limiting itself to protect property rights and the rule of law; and the 'social state' that engages in a more proactive role in distributing resources that is required by the socio-economic rights discourse[116].

An important premise of this reasoning is that a holistic conception of human rights stands in contrast to the neo liberal paradigm; and thus, has the potential in challenging socio-economic inequalities perpetuated by the latter[117]. However, despite these tensions, for historical reasons, what has become prominent is *a particular form* of a human rights framework which is different from *human rights as such*. MacNaughton and Frey argue that the holistic human rights approach enshrined in the international bill of rights was not followed during the cold war period and also in the subsequent epoch defined by the dominance of neo liberalism. Instead, a skewed and a selective version of human rights which promotes civil and political rights while largely dismissing socio economic rights became dominant[118]. This narrowly defined human rights agenda promoted by the United States and other powerful western countries emerged in alliance with the global neo liberal agenda. The failure of the human rights community to adopt a holistic approach has abetted this alliance.

The example of how the human rights community reacted to historic incidents such as the *coup d'état* in Chile 1973 is representative of this tendency[119]. Following the US sponsored coup that toppled the socialist government of Salvador Allende, human rights advocates in the US and Europe were critical of the violations of the security and rights of the individual person that took place in Chile; such as arbitrary detention, torture, inhumane treatment, summary execution and genocide. However, serious implications the neo liberal shock therapy had on socio-economic rights were left unaddressed. The military dictatorship functioned as a mean of implementing neo liberal measures; reversing socialist reforms made under the Allende regime. However, international human rights organisations such as the Amnesty International confined its criticism to human rights violations of civil and political nature; and

[116] ibid 17.
[117] However, both O'Connell and Wills observe that in practice this potential has not been realised and there is a tendency in socio-economic rights jurisprudence to define these rights in line with neo liberal imagination. See Wills (n 33); Paul O'Connell, 'The Death of Socio-Economic Rights' [2011] Modern Law Review 74(4) 532; Joe Wills and Ben Warwick, 'Contesting Austerity: the Potential and Pitfalls of Socioeconomic Rights Discourse' [2016] 23:2 Indiana Journal of Global Legal Studies 629.
[118] (n 106) 11.
[119] ibid.

avoided any discussion on socio-economic causes that led to these abuses. As Susan Marks explains: 'where the effects of neo liberal reconstruction began to bite, activists confined their criticism to the denunciation of abuses leaving unchallenged the conditions in which those abuses have become possible[120]'.

This one-sided interpretation of human rights that only recognizes civil and political rights as human rights share much commonalities with neo liberalism; such as the focus on the individual, the hostile or the suspicious attitude towards the state and the collective nature of human existence. This narrow interpretation of human rights has become internalized in international, national, local and personal understandings of human rights; and has created the appearance that ideologies of human rights and neo liberalism are aligned and compatible[121].

c) Socio-Economic Equality as a *Distinct* Human Rights Norm

The lack of attention in the human rights community to the rise of socio-economic inequalities is also related to the absence of *an explicit right to economic and social equality* within the human rights framework. As MacNoughton explains, the entire body of international human rights law has 'little to say about vertical inequalities of income, wealth and social outcomes – either between or within countries[122]'. However, she argues that construing such right is important for two reasons. First, in an instrumental sense, socio-economic equality enables the realization of other human rights. Second, and most important; the norm equality has intrinsic value; equality in dignity and rights is a value in itself. Writing in the context of Sustainable Development Goals declared by the UN '2030 Agenda' MacNaughton notes that even though the agenda refers to 'reducing inequalities within and among countries' as one of its goals; and though it is claimed that the agenda is grounded in international human rights law, 'human rights has little to offer with respect to benchmarks or indicators for reducing inequalities'; because international human rights law has not developed norms or jurisprudence around the issue of virtual inequalities[123].

MacNaughton suggests that by recognising a right to equality, distinct from right to non-discrimination human rights bodies could establish explicit legal obligations for addressing extreme vertical inequalities; such as specific limits on economic and social inequalities. This will foster attempts such as the Sustainable Development Agenda by providing human rights indicators to assess the success in addressing economic and social inequalities. According to her, there are three possible ways in the body of international human rights law to construe a right to social and economic equality. *First,* UDHR

[120] Susan Marks, *Four Human Rights Myths* in David Kinley, Wojciech Sadurski and Kevin Walton (eds) *Human Rights: Old Problems, New Possibilities* (Chelthenham: Edward Elgar Publishing, 2013) 217.
[121] ibid 13.
[122] MacNaughton (n 7) 1064.
[123] ibid 1066.

article 7 and ICCPR article 26 have multiple equality and non-discrimination provisions that have yet to be deciphered and conceptualised. These articles state that all are entitled to equal protection of law without discrimination. These provisions can be interpreted as applicable to all human rights; not only civil and political rights. *Second*, each economic and social right can be interpreted in a manner which includes the notion of vertical equality. Vertical equality is a key component of many civil and political rights; such as the right to vote. The CESCR so far 'has not considered vertical equality as a central feature of its conceptual framework and instead has focus on ensuring minimum essential levels of rights'. By making vertical equality an essential component of socio-economic rights the realization of these rights could be defined in a manner consistent with the equality norm. *Third,* prohibition of discrimination on the basis of economic status – or 'property' as it appears in article 2 of the ICESCR has not yet fully conceptually developed. This could be developed and be implemented in practice[124].

The common ground all the above critics; Alston, McNaughton, O'Connell and so forth share is that the notion of *human rights as such*; or a holistic conception of human rights is capable in formulating a response to socio-economic inequalities. This line of thinking is critical of the existing human rights practice; but does not rule out the importance of human rights altogether. In this sense, I call this critique a 'soft critique' on existing human rights practices which has to be differentiated from the line of 'hard critique' that I will explore below.

3.3 Limitations of Socio-Economic Rights: The 'Hard' Critique

Legal historian Samuel Moyn has presented a sceptical account on the human rights discourse's ability in tackling the inequality problem; even if human rights is defined in a holistic manner by including socio-economic rights. In *Not Enough: Human Rights in an Unequal World* which traces the history of the two notions of distributive equality and distributive sufficiency, Moyn discusses the relevance of human rights in addressing rising inequalities in the contemporary neo liberal age[125]. He forwards following arguments; first, he refutes the claim that human rights is a mere instrument or an apparatus of global neo liberalism. Inequalities increased because of neo liberalism and it is 'neo liberalism that has to blamed for neo liberalism; not human rights'[126]. Second, he also refuses to accept the notion that human rights have the potential in developing an alternative project to neo liberalism by pursuing a greater egalitarian agenda. This is because of the structural limitations inscribed in the human rights discourse itself. The notion material equality is not a value that the human rights discourse attempt to defend; and never was a part of the project. From its outset; what the international human rights movement defended was a notion of material sufficiency; instead of material equality.

[124] ibid.
[125] Samuel Moyn (n 65) 173.
[126] ibid 192.

In elaborating the first argument Moyn refers to the claims of certain Marxist critics; importantly Naomi Klein and Susan Marks. These scholars tending to treat both neo liberalism and human rights as a part of the same hegemonic project refers to the fact that both movements became globally prominent during the same historical time period; from 1970s onwards. For example, Marks observes that the parallel developments of the two movements; the rise of the neo liberal version of 'private capitalism' on the one hand and attempts to pursue human rights across the world on the other coinciding historically with each other is not an accident[127]. In 1970s national welfare states which were engaged in greater redistribution entered into crisis and the New International Economic Order (NIEO) movement of the third world that demanded equality in terms of international economic arrangements was weakened. Global neo liberalism which replaced above paradigms have exacerbated inequalities throughout the world. However, it is in this very neo liberal epoch that human rights also became a significant movement. The striking correspondence of the rise of human rights and global neo liberalism have raised questions about the relationship between the two movements.

Moyn agrees that the two phenomena share the same historical timeline. As he explains, three great casual factors were influential in the rise of the international human rights paradigm in late 1970s. Firstly, the loss of faith in cold war paradigms; especially the loss of faith in socialism pushed disillusioned activists towards new and 'antipolitical' sorts of movements; and the human rights movement engaged in informational politics provided an alternative expression for this dissatisfaction. Secondly, in the international system, human rights started becoming a language of state legitimacy. This tendency was promoted by governments in United States and Western Europe. Thirdly, the realization of decolonization called upon western nations to figure out a new form of rights based international supervision and human rights answered the call[128].

However, the historical parallel of the two movements or certain ideological common ground both paradigms share; such as suspicion on statism does not provide sufficient grounds to claim that human rights is a neo liberal phenomenon. Due to the parallel development of two discourses there could be connections to be found between two; but the actual relationship between the two discourses is more subtle. As he explains, 'although the two movements for human rights and neo liberal policies shared the same abstract lifespan, their concrete relation to each other was far from straightforward in its details across time and space[129]'. Historical 'coincidence' or companionship does not necessarily implicate actual causality and complicity. Thus, he disagrees with the view that 'human rights campaigns abet neo liberalism by distracting the attention from true source of very evils they purport to oppose'[130].

[127] ibid 174.
[128] Samuel Moyn, 'A Powerless Companion: Human Rights in the Age of Neo Liberalism' [2014] 77 Law and Contemporary Problems 147 157.
[129] n (65) 176.
[130] ibid, 174,175.

But absolving human rights from the accusation of abetting neo liberalism is not a defence the human rights movement can invoke in the face of rising inequalities in our times. The normative guidance human rights could provide in combating inequality is weak since the human rights discourse; even with the inclusion of social rights is minimalist in its nature. Human rights focus on establishing a minimum floor of human protection; it does not strive for a greater egalitarian project of distributive equality and has nothing to say about the principle value of material equality that neo liberalism has threatened[131]. Thus, for Moyn, rather than been a tool of neo liberalism human rights has proved to be a 'powerless companion' of the former; they have been condemned to watch the expansion of inequalities but is powerless to resist since it lacks the normative resource to do so[132]. Neo liberalism has 'changed the world while the human rights movement has posed no threat to it'[133]. Therefore:

> '.. with their moral focus on a floor of sufficient protection in a globalizing economy, human rights did nothing to interfere with the obliteration of any ceiling on distributive inequality. Deprived of the ambiance of national welfare, human rights emerged in a neo liberal age as weak tools to aim at sufficient provision alone[134]'.

The distinction Moyn draws between the notions of material *sufficiency* and *equality* is central to his argument and requires further discussion. As he explains, these two notions provide two different ideals of distribution. Sufficiency concerns how far an individual is *from having nothing* and how well she is doing *in relation to some minimum of provisio*n of the good things in life. In contrast, equality concerns how far individuals are *from one another* in the portion of those good things they get. According to the sufficiency notion what matters is whether there is deprivation after initial distribution and deprivation is measured against some conception of bottom line of goods and services. Thus, it is concerned with whether any individual is placed below the minimum threshold. Within this paradigm, hierarchy is not immoral. As long as no one is miserable in relation to the bottom minimum, the prevalence of hierarchies is not deemed as undesirable[135].

The notion of equality defines distribution in a radically different manner. According to this perspective, 'even if the most basic needs are met enormous hierarchies can still exist[136]'. Thus, at least a modicum of equality in the distribution of good things in life is necessary. Therefore, a mere floor of protection against insufficiency is inadequate; there has to be a ceiling on inequality. Without such ceiling, there

[131] n (128) 151.
[132] ibid.
[133] n (65) 216.
[134] ibid 176.
[135] ibid 4.
[136] ibid.

will be enormous inequalities; different ways of life in which the wealthy will prosper over their poor counterparts. In other words, the equality notion demands greater egalitarianism in distribution beyond a minimum floor of protection. This does not necessarily involve absolute equality of material outcomes; but is clearly distinct and broader than the sufficiency notion which is based on a minimalist agenda[137].

The two notions are not necessarily in stark competition. Egalitarians in the history, while advocating for greater equality, also had concern for the importance of sufficient minimum provision. An advocate of equality can also stand for the importance of having minimum protection floors. But among advocates of sufficiency, there is a tendency to invoke the sufficiency norm in an exclusive sense; either pushing away the objective of equality to a postponed next step or even believing that achieving sufficiency depends on embracing more inequality[138].

Moyn refers to numerous egalitarian initiatives in modern political history which attempted to promote a broader understanding of fair distribution. Such initiatives combined minimum protection provisions with greater distributive agendas at the same time. His examples vary from the Jacobin phase of the French revolution to the 'age of national welfare' in the mid twentieth century. In the latter era the rise of communism that promoted their own model of welfare state in Eastern Europe compelled the capitalist states in the west to commit themselves to a social welfare agenda in their domestic terrain. On the other hand, most newly independent countries emerging after the wave of decolonization experimented with their own versions of welfare states. Further, understanding that realizing equality in the domestic realm in the third world is intertwined with reforming the unjust international economic order that had its foundations in colonialism, the NIEO movement spearheaded by egalitarian minded leaders in the global south demanded greater distributive equality in the international realm. For Moyn, this era was characterized with 'the most materially egalitarian political economy modernity has seen[139]'. Thus;

'.. The ideal of national welfare never implied only protection for the weak. It condemned the libertarian premises of nineteenth-century capitalism, championing the state's role to intervene for the sake of the common good, whether in the name of the reform of capitalism or communist revolution, Christian democracy or secular socialism[140]'.

This era of national welfare was not perfect; and Moyn is careful not to idealise it. In the framework of the nation state, there were numerous other issues; some welfare states were authoritarian and in

[137] ibid.
[138] ibid.
[139] ibid 213.
[140] ibid 214.

democratic welfare states there were issues pertaining to status equality; women, minorities and other disadvantaged groups were often excluded or undermined from welfare provisions. Despite these drawbacks, the age of national welfare represents a paradigm where both notions of sufficiency and equality were simultaneously embraced; rather than sequencing or prioritizing either of the notions.

The contention of Moyn is that the human rights paradigm; which gained prominence subsequent to the demise of the age of national welfare corresponds to the sufficiency notion alone and the equality notion is not represented in its project. Human rights have no commitment on their own for material equality and in the context of globalization and the collapse of national welfare states, the vision forwarded by human rights is a perspective to ensure basic provisions within the globalization process; a vision to 'tame' globalization rather than promoting greater quality in national and international domains[141]. The Vienna Conference on Human Rights (1993) proclaimed that socio-economic rights have equal status as civil and political rights and all human rights are indivisible. However, in the absence of national welfare state projects to frame social rights in an egalitarian spirit, the notion of socio-economic rights which has become prominent is minimalist in character; attempting to define obligations of states with reference to a minimum level of obligations. The CESCR has institutionalized this minimalist interpretation by defining socio-economic rights as comprising of 'minimum core obligations'. As Moyn explains;

> '.. The Committee offered the notion that economic and social rights have a 'minimum core' that human dignity requires immediately. In other words, within many norms of sufficient provision, there was a subsistence floor: a minimum within a minimum[142]'.

Since human rights, even with the inclusion of socio-economic rights limits itself to the sufficiency notion; and as it does not adhere to the equality notion, the ability of the human rights discourse to address the issue of inequality becomes problematic and doubtful. As Moyn provocatively puts it 'even perfectly realized human rights are compatible with radical inequality[143]'.

The roots of this minimalist articulation of socio-economic rights is further discussed by Julia Dehm in her historical account which explores the debates that took place within the international human rights system on defining the content of these rights[144]. She confers with the view that socio-economic rights

[141] ibid 192.
[142] ibid 200.
[143] Samuel Moyn, Human Rights and the Age of Inequality (Global Open Rights: 2015 October 27) https://www.openglobalrights.org/human-rights-and-age-of-inequality/ (retrieved on 28.03.2019)
[144] Julia Dehm, 'A Pragmatic Compromise Between the Ideal and the Realistic': Debates over Human Rights, Global Distributive Justice and Minimum Core Obligations in the 1980s' (Draft Chapter) Forthcoming in Christiansen and Steven L.B. Jensen (eds) *Histories of Global Inequality: new Perspectives* (Palgrave Macmillan)

framework adhering to the notion of minimum core obligations subscribes to a narrower sufficiency conception rather than embracing a broader ideal of distributive justice. However, she offers a reading which invites us to see this particular meaning human rights has acquired as a dynamic occurrence; as a 'contingent product of historical struggle[145]'. The meaning of human rights; or how human rights are conceptualized is not fixed; there is no static meaning and it is an outcome of a struggle between numerous factors that have to be understood in their historical context.

For her, before the breakthrough of the contemporary international human rights movement in 1970s there was an attempt from the part of global south to invoke the ideas of human rights to forward their agenda. This attempt entailed a dimension which focused on fostering economic equality both in international and domestic arenas. As Dehm explains, this attempt associated with the NIEO movement had a 'structural approach'; attempting to remedy structural obstacles that lie at the root of injustices. For instance, a report prepared by the Iranian diplomat Manouchehr Ganji in 1975 explains how inequalities within and among countries pose challenges in realizing human rights; and he outlines the relationship between ensuring socio-economic rights and achieving egalitarian results in wealth distribution[146].

However, the dominant socio-economic rights framework we witness today is a later phenomenon which gained traction in 1990s. The approach of defining legal obligations arising from socio-economic rights in relation to a conception of minimum core obligations, in its historical context, is a position advocated by human rights scholars attempting to respond the conservative claim that socio-economic rights are not legally enforceable 'rights'; and are mere 'desirable goals'. In responding to this claim, pro socio-economic rights scholars had to demonstrate that these entitlements are enforceable individual rights which creates obligations to the state. In this course, they found the approach of 'basic needs' that gained importance in the international development discourse in 1970s as a useful conception to frame their counter-claim. The basic needs approach was first proposed by the International Labour Organization; and later admitted by the World Bank in formulating development policies. The Bank president Robert McNamara at the time differentiated 'reducing poverty' from 'closing the gap' and referred to the former as a realistic objective[147].

Later thinkers within the development discourse; such as Amartya Sen and Henry Shue attempted to formulate basic needs as human rights and this represented a nuanced form of framing the issue of poverty eradication. However, framing basic needs as human rights in its approach was deliberately minimalist. For example, Shue's focus was on establishing a 'moral minimum'; 'a lower limit of

[145] ibid, 1
[146] ibid, 3
[147] ibid 6.

tolerable human conduct, individual and institutional[148]'. The aim was to address deprivation; not inequality. It is this approach of conceptualizing freedom from deprivation in human right terms that was later incorporated and developed by proponents of socio-economic rights to formulate an enforceable model of socio-economic rights.

As Dehm explains, writings and reports of the international human rights expert Asbjorn Eide in 1980s were influential in developing this approach. In 1982, the UN Sub Commission for the Prevention of Discrimination and Protection of Minorities mandated Eide to develop the idea right to food as a legal notion entailing corresponding obligations. The focus of Eide was to transform the claim of right to food from a moral to a legal right[149]. His contribution introduced the distinctions between obligations to respect, protect and fulfil; and also, obligations of conduct and obligations of results. This approach enabled him to provide precise definition to right to food; but as Dehm notes, Eide was careful in his formulation not to attribute obligations on direct provisioning of material goods on states and the international community[150].

The other influential contribution came from Danilo Turk who was appointed as the UN Special Rapporteur to submit a study on the realization of socio-economic rights. Turk's ideas as well as the work of the expert committee established in 1985 to monitor state compliance with the ICESCR shaped the current understanding of socio-economic rights. These contributions together with other authoritative writings at the time attempted to provide a 'realistic' definition to socio-economic rights and a 'short list of minimalist well-being rights' was seen as the foundation for progressive realization of all the rights enshrined in the Convention[151]. This approach aimed at responding not only to the claim that socio-economic rights are mere social aspirations; but also, to the claim of resource-restraint mainly raised by certain third world governments.

Some proponents of the minimum obligations model explicitly distinguished their approach from 'ideal principles of distributive justice' and claimed such ideal within the current world economic order is an unrealistic aspiration[152]. They were of the view that such ideal principles raise uncertainties on surplus wealth creation which is the pre-condition for any scheme of redistribution. In a similar vein, Eide also refused the relevance of adhering to the notion to which he refers as 'ideal distributive justice'. For him, though some provisions of the UDHR and ICESCR might in face value indicate that 'everyone should be equal in control over resources' such interpretation is undesirable for two reasons; one, such distribution requires a powerful state that might be detrimental for civil and political rights; and two, the 'privileged' will resist such attempt and that will lead towards social conflict. Further, he confers

[148] ibid 8.
[149] ibid 11.
[150] ibid 12.
[151] ibid 15.
[152] ibid 15.

with the view that broader distributive justice has negative implications on capital accumulation[153].

In defending the minimum obligations model, Eide calls upon for a 'pragmatic compromise' between what he saw as idealism and realism. The aspiration for greater distributive justice in this sense was undermined as idealism. As Dehm argues, this approach which is built upon the fear of antagonizing the privileged resembles a 'strategic appeal to the powerful than to contest unequal distribution of power[154]'. Further, their belief in the market forces as creating pre-conditions for realization of socio-economic rights demonstrates a tendency to treat the capitalist mode of economic organization which perpetuates economic inequalities as a given truth; as an ultimate fact. Thus, their approach was to formulate human rights as a framework to humanize the capitalist society by reaching out to the worse off rather than diminishing inequalities and creating a more egalitarian order.

3.4 Theoretical Conclusions

The discussion of the preceding sections demonstrates how different scholars approach the relationship between the international human rights framework and socio-economic inequalities in different ways. This scholarship involves a range of important themes; the relevance of socio-economic rights, relationship between human rights and neo liberalism, the absence of a standalone right to socio-economic equality and minimalist structure of the socio-economic rights framework. In this section I will critically engage with the ideas outlined in the discussion so far to draw several theoretical propositions.

First, from the point of view of addressing socio-economic inequalities the contribution of the existing international human rights discourse has to be admitted as an utter failure. This is a point that almost all the scholars that we discussed above agrees on. The human rights community in all its forms; as an institutional system and also as international and local movements campaigning for human rights have largely failed to understand or articulate socio-economic inequalities as a human rights issue.

Second, the concept of socio-economic rights provides an opening for the human rights community to formulate a human rights response to socio-economic inequalities. The issue of socio-economic inequalities is an issue related to resource and wealth distribution. Large disparities in distribution leads to vast levels of inequalities and *vice versa*. Therefore, any attempt to reduce these inequalities has to deal with the problem of distribution ensuring just distribution of social wealth. The notion socio-economic rights enable such distribution since realizing socio-economic rights; even in its minimalist form requires some sort of progressive intervention of the state committing itself to empower economically disadvantaged communities. For example, the ICESCR in its reference to right to education states that primary education shall be available free for all and refers to the progressive

[153] ibid 16.
[154] ibid 17.

introduction of free education in making secondary and higher education accessible[155]. The CESCR recognizes 'economic accessibility' as a pillar of right to education; suggesting education should be affordable for all[156]. Further in terms of state obligations to respect, protect and fulfil; the element of fulfil requires the state to provide right to education through direct provisioning for individuals and groups unable to realize the right by the means at their disposal[157]. Also, it recognizes that in most circumstances the responsibility for direct provision of education lies with the state[158]. This endorsement requires the state to invest more on public education that will result in directing social surplus towards lower income communities.

Thus, bringing socio-economic rights to the forefront of the human rights agenda as Alston suggests can have positive impact on reducing inequalities. The establishment of minimum protection floors might not eradicate inequality; but still such provisions are useful to encourage redistribution at least to a certain extent. Therefore, socio-economic rights are important in combatting inequalities and the human rights community and states should adhere to a holistic approach; fully recognizing the indivisibility of human rights.

However, to pursue a greater egalitarian agenda confining to minimum protection provisions is not sufficient. It is important and necessary to move beyond the current minimalist meaning socio-economic rights have acquired. This brings us to the third point; in order to be an effective tool against inequalities the notion of socio-economic rights has to be radically reformed by defining socio-economic rights with reference to the notion of equality. The critique of Moyn is insightful here to understand the limitations of the existing socio-economic rights discourse. This proposition raises two inter-related questions. First, is it possible to formulate a renewed conception of socio-economic rights by aligning it with the notion of equality? Second, whether such realignment will be effective to develop an alternative framework in order to address socio-economic inequalities?

On the first question; though redefining socio-economic rights in a spirit of egalitarianism might appear as a challenging task, there is no reason to assume that it is an impossible task on the other hand. It is true that the current interpretation given to socio-economic rights is minimalist. But does that mean this minimalism is inherent and a different interpretation is not possible at all? Julia Dehm's contribution to the debate attempting to explore the meaning of socio-economic rights as a historical phenomenon; as an outcome of a contingent product of a historical struggle is helpful to answer this question. Her contribution shows that the minimalist interpretation was not the only possible definition; there were other approaches in the NIEO phase to define socio-economic rights in a different sense. The dominant interpretation we evidence today is a result of a conscious intervention of a particular set of scholars

[155] ICESCR Article 13 (2).
[156] CESCR General Comment 13 on Right to Education § 6 (b).
[157] ibid § 47.
[158] ibid § 48.

sharing a particular form of a view on justice and distribution. The minimalist interpretation stemmed from that particular worldview which treated commitment to broader notions of distributive justice as undesirable or unrealistic; and instead advocated a compromised path of pragmatism. The text of socio-economic rights has no objective meaning; the meaning is a discursive construction. As any construction, this specific construction also is not neutral; and reflects the adherence to a particular way of thinking.

If we understand the minimalist interpretation in this sense; as something indeterminate, as something subjective and contingent; such reading allows us to imagine of a different form of interpretation. The entire history of human rights is a history of discursive struggles to define and redefine the element of *human* in human rights. Numerous social forces that were excluded from the initial classical liberal notion of human rights; women, racial minorities, workers, colonised people and so forth attempted to radicalise the rights discourse by reinterpreting the rights notion in line with their aspirations. The broader notion of human rights we witness today comprising of different forms of rights is a result of these discursive interventions. This history shows us that the human rights discourse is not something 'fixed' but is open ended and to that extent there is possibility for rearticulation.

As Dehm suggests '... in order for human rights frameworks to better address economic inequality, we also need to rethink our conceptions of human rights and expand understandings of what human rights frameworks are or could be[159].' Proposals of Alston and McNaughton to revitalize the quality norm should be understood as such discursive interventions to provide a broader understanding to human rights. The concrete proposals to incorporate the equality notion in interpreting various provisions of international human rights treaties; and treating issues on redistribution and tax policy as human rights issues are radically innovative measures enabling us to think of human rights in an egalitarian spirit. Popularizing this perspective is a part of a hegemonic contestation that has to be fought in all levels; in the level of social movements and also in the institutional level.

The second question is on the potential of human rights. Samuel Moyn is sceptical about the potential of human rights in resisting inequality for several reasons; he argues that even if the human rights movement correct their failure by starting to take the equality notion seriously, the form of politics the movement adhere to; informational politics aiming to name and shame governments is not sufficient for the cause of promoting a larger egalitarian project. For him, all the historical initiatives combining sufficiency with equality were governmental initiatives informed by a commitment to equality. Equality was achieved 'through enthusiasm and commitment in the part of the state; not as a result of non-governmental initiatives stigmatizing governance'[160]. Further, referring to the age of national welfare,

[159] Julia Dehm, Righting Inequality: Human Right Responses to Economic Inequality in the United Nations (Draft) Forthcoming in Humanity: An International Journal of Human Rights, Humanitarianism and Development for 2019
[160] Moyn (n 64) 219.

he contends that in the non-communist world the social welfare state became a possibility due to the combination of external and internal threats; the communist threat outside and the threat posed by strong labour movements in the domestic realm. The human rights movement engaged in informational activism is not in a position to create the same 'threat' in our times. Human rights cannot replace the role socialist and labour movements performed in the past.

This is indeed a sharp observation that has to be taken seriously. Human rights movements; especially prominent organisations such as the Amnesty International are not political movements founded on collective mobilization. Their objective is limited; they do not aim to capture political power and instead they act as pressure groups to prevent human rights abuses. It is impossible to imagine of a broader egalitarian project without political mobilization and the human rights framework is not a substitute for such mobilization.

But is it necessary to think of political mobilization and the role of human rights in mutually exclusive terms? Is it impossible for these two elements to co-exist in a broader project in a manner nurturing each other?

Though human rights cannot replace the role of political mobilization its importance lies in two levels. This importance stems from the normative strength human rights as a discourse possesses in contemporary political imagination. First, in the grassroots level, the human rights discourse enables social movements fighting against inequality to articulate their demands with moral rigour. For instance, Paul O'Connell refers to recent struggles on housing in the United Kingdom and the movement against water charges in Ireland as examples in which housing and water framed as human rights were invoked to challenge the effects of commodification[161]. These movements are not human rights movements such as the Amnesty in the strict sense; but framing demands in terms of human rights enabled them to further the demand in a convincing manner appealing to a broader audience. Second, in the international institutional level; especially in the United Nations system, the impact moral pressure can have on state conduct cannot be neglected. If the UN human rights system starts interpreting human rights in an egalitarian spirit, corresponding state obligations will also be defined in the same way and that can have a positive impact on how states addresses issues pertaining to socio-economic rights in the domestic level. This moral pressure becomes more effective when rights are incorporated into the legal form.

This is not to suggest that human rights alone are sufficient. O'Connell is of the view that human rights alone will not solve the injustices faced by populations; and insists the human rights language should be supplemented with a broader theoretical and political perspective[162]. Joe Wills who is critical of structural limits of the socio-economic framework as same as Moyn nevertheless does not rules out the

[161] Paul O'Connell, 'Human Rights: Contesting the Displacement Thesis' [2018] vol 69 no 1 Northern Ireland Legal Quaterly 19.
[162] ibid 32.

relevance of human rights. He sees the 'universalizing effect' of the human rights discourse; the potential of the discourse to frame the interests of a particular section of the population as a universal interest of humanity as a strength that can be successfully incorporated in a broader counter hegemonic movement against neo liberal dominance[163]. This perspective which avoids the two extremes; idealizing the potential of human rights or refusing any meaningful potential of human rights appears as a plausible approach to follow.

In sum; the propositions I draw are as follows; the failure of existing human rights practice to address socio-economic inequalities have to be rectified; and adopting a holistic notion of human rights by attributing larger attention to socio-economic rights is crucial in addressing this deficiency. The socio-economic rights framework defined in its current form has structural limitations due to its minimalist orientation. Therefore, a renewed conception of human rights; that corresponds to the dimensions of equality and distributive justice is needed in order to formulate an effective response. The human rights movement has potential in developing such response; and it should play a definitive role. But it is also important to note that an exclusively human rights response is insufficient to reverse the ills; it has to be a part of a broader counter-hegemonic project pursuing to enforce an order based on distributive justice.

It is against this background that I wish to analyse the contribution the recognition of the right to the city could make to the human rights discourse. How could the right to the city contribute in broadening our current understanding on human rights in a manner that serves a broader distributive justice agenda? What elements of the right to the city are useful in formulating a renewed human rights response to socio-economic inequalities in the urban sphere? In order to prepare the background for that analysis, in the following two chapters I will outline the main dimensions of the concept; both in the normative sense and as a practical-legal concept as exercised in Brazil.

[163] (n 115).

Chapter 4: The Right to The City: The Concept and its Dimensions

4.1 Origins of the Concept: Henri Lefebvre

French Marxist theorist Henri Lefebvre first introduced the notion of the right to the city in 1968 in the book titled *Le Droit a la Ville (The Right to the City).* This idea was later developed by him in a number of further writings[164]. Belonging to the non-orthodox tradition of Western Marxism, Lefebvre was inspired by early writings of Karl Marx; focusing on *alienation* people face in the bourgeoise society as a central category of analysis[165]. Alienation refers to the sense of estrangement human individuals in modern industrial societies experience; separated from the creative hold of their own labour and what they produce. For Lefebvre, the urban is not only a product of industrial processes; but also 'more or less the *oeuvre* of its citizens[166]'. The production of urban space is a collective endeavour drawing from the contribution and labour of all the inhabitants. Therefore, 'prevention of certain groups and individuals from fully participating in this collective act constitutes a denial of right to the city for those who are excluded as such'[167].

Exclusion of modern urban life is the expression of a main contradiction in our times; the contradiction between realities of the society and facts of civilization. For instance, on the one hand, we experience realities such as genocide; and on the other 'facts of civilization' such as medical progress enabling lifesaving. In a similar vein, in the urban space, we witness the contradiction between *socialization of society* and *generalized segregation*[168]. The city has become the *centre* of decision-making, information, authority and knowledge; but also, in parallel, is increasingly segregated; 'into peripheries, into suburbs, some inner, some further out, in rings where the workers and the excluded are relegated[169]'. Urbanization is a totalisation process; and as Andy Merrifield explains, 'any totalisation has internal contradictions that both structure and de-structure'. Totalisation is never 'total'; it always expels a 'residual element[170]'. In other words, 'there will always be people who do not fit in to the whole, who do not want to fit in or who are not allowed to fit in'[171].

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[164] see The Urban Revolution (1970), The Production of Space (1974), Rythmanalysis (1992)
[165] Mark Purcell, 'Possible Worlds: Henri Lefebvre and the Right to the City' [2013] vol 36 no. 1 Journal of Urban Affairs 141, 145.
[166] Chris Butler, *Henri Lefebvre: Spatial Politics, Everyday Life and the Right to the City* (Routledge,2012) 143.
[167] ibid 143.
[168] Henri Lefebvre, 'The Right to the City' in Eleonore Kofmann and Elizabeth Lebas (eds), *Henri Lefebvre: Writings on Cities* (Oxford: Blackwell Publishers, 1996) 147.
[169] Henri Lefebvre, 'No Salvation Away from the Centre?' in *Henri Lefebvre: Writings on Cities* (ibid) 206.
[170] Andy Merrifield, 'Fifty Years on: The Right to the City' in *The Right to the City: A Verso Report* (London: Verso, 2017).
[171] ibid

Therefore, for Lefebvre, the right to the city is the right of those who are excluded to reclaim the urban space in a manner transforming the city. This is a 'cry' and a 'demand'; and for him, the working class is the agent; the social carrier or the support of this realization[172]. Here, Lefebvre does not merely refer to the right of those who are excluded to return to the centre in a touristic sense. Neither does he speaks of the right of the excluded to the 'existing city'. What he refers to is a 'transformed and renewed urban life[173]'. As he explains:

> '.. Among these rights in the making features the *right to the city* (not to the ancient city, but to urban life, to renewed centrality, to places of encounter and exchange, to life rhythms and time uses, enabling the full and complete usage of these moments and places)[174]'

Lefebvre draws a distinction between *the city* and *the urban.* The former is the contemporary city; the capitalist city which has make everything in the city; including the space itself reducible to economic exchange. The contemporary city attributes primacy to *exchange value* over the *use value* of inhabitants[175]. The difference between exchange value and use value is a central category in Marxian economics. In brief, it refers to the dual aspect of the value in a commodity; a commodity has a use value in the sense that it fulfils a particular need of a consumer; and at the same time it has an exchange value; the value to which it is exchanged in the market. For instance, when someone sells a house to another, the house becomes a commodity. It has a use value for the buyer in the sense of habitation; and the price it is sold reflects its exchange value. The contemporary city, by reducing everything into commodities subjects the life of the city to the logic of exchange value. The commodification of the urban space produces the effect of segregation; and prevents inhabitants from coming together in shared space of interaction. The process of commodification and the entrenchment of property right regimes alienate inhabitants; since it separates urban space from the social web of connections that it is embedded in. Lefebvre's idea of the right to the city is an intervention to de-alienate the urban space[176].

There are two important aspects in such intervention; *appropriation* of urban space by the inhabitants and the development of forms of *participation* that permit the full engagement of inhabitants in decisions relevant to spatial production[177]. Appropriation refers to the act of inhabitants reclaiming the urban space; which is rightfully theirs, but is being expropriated by the prevalence of property regimes defined by the logic of exchange value. The crucial dimension of appropriation is establishing the pre-

[172] Lefebvre (n 169) 158.
[173] ibid.
[174] Henri Lefebvre, 'Thesis on the City, the Urban and Planning' in (n 168) 179.
[175] Purcell (n 165) 149.
[176] ibid.
[177] Butler (n 166) 144-45.

eminence of use value over exchange value in the everyday inhabitance of space[178]. The notion of participation enables inhabitants to engage in this collective endeavour. Lefebvre puts the idea participation at the heart of his project in opposition to both the rule of market forces and top down beauracratic state planning[179]. The idea participation which he advances derives from the radical political conception of *autogestion*; indicating self-management. The governance of modern societies is increasingly an affair of the elite; and the participation of citizens in decision making has been largely reduced to a nominal and an advisory affair[180]. The form of participation which we witness in traditional representative modes of democracy is a form of ideology which 'allows those in power to obtain, at a small price, the acquiescence of concerned citizens. After a show trial more or less devoid of information and social activity, citizens sink back into their tranquil passivity[181]'.

Instead Lefebvre proposes the development of real and active forms of participation; self-governing units of inhabitants in the local level which are capable in appropriating the urban space. As Chris Butler explains, Lefebvre's idea of participation is fundamentally different from 'tokenistic' forms of participation'; 'public information campaigns and community consultation processes that now have a common place in the theatre of state policy formation'[182]. The form of participation which he advocates are self-governing units; mechanisms controlled by inhabitants themselves in contrast to mechanisms imposed from above. As Lefebvre explains: 'without self-management, 'participation' has no meaning; it becomes an ideology and makes manipulation possible[183]'. The 'urban' is therefore a futuristic notion; the situation in which inhabitants have appropriated urban spaces through participation; collectively producing and appropriating the urban space in a context in which the use-based needs of inhabitants dictates the course of affairs.

Further, Lefebvre envisions the right to the city as a mean of broadening the contract between the state and the citizenry. Modern citizenship is based on the contract between the state and citizens which stipulates the rights of citizens. Rights are always outcomes of political struggles[184]. The rights that are manifested in the social contract today are political claims of the past that drew mobilization and political struggles for their realization. For Lefebvre, the right to the city (and other new rights that he proposes; right to information, difference, self-management) is a political claim; a claim for a possible right requiring mobilization for its achievement. These claims will activate the citizenry in pursuing a radical extension of the social contract; and in the course of the struggle Lefebvre believed that new

[178] ibid 145.
[179] ibid.
[180] Purcell (n 165) 150
[181] ibid.
[182] n (166) 145.
[183] ibid 146.
[184] Purcell (n 165) 146.

forms of collective self-management will emerge. He envisioned such forms to be the seeds of an alternative society; different from both free market capitalism and state planned socialism prevalent at his time.

Though Lefebvre wrote his first essay on the right to the city in 1960s; the renewed interest on his ideas has been a fairly recent occurrence in political and academic forums. This renewed interest is the result of the combination of several factors; first, the increased use of the concept by numerous urban social movements to articulate their demands; second, the use of the concept by critical urban theorists to critique contemporary urbanisation and to propose alternatives and third; the emerging tendency of institutionalization of the idea in both international and local levels.

4.2 Revival of the Concept: Critical Urban Literature

Lefebvre proposed the Right to the City in times before the emergence of neo liberal globalisation in the context of western societies. However, since 1960s, political-economic processes have significantly transformed the global urban landscape and numerous theorists and scholars have attempted to revive insights drawn from Lefevbre's ideas in the present conjuncture. Academic literature on the right to the city is complex and various scholars have approached the issue in different ways. The scholarship on the issue demonstrates a vagueness as well a radical openness at the same time[185].

Peter Marcuse; a key proponent of the critical urban theory school defines the right to the city in relation to three inter-related questions; whose right is it about? what right is it; and to what city the right relates to[186]? He construes Lefebvre's reference to right to the city as a 'cry and demand' as comprising two distinct elements. Demand derives from *necessity*; it comes from the directly oppressed, the ones who are in want; the homeless, the impoverished and those who are excluded from the benefit of urban life. The cry derives from *aspiration*; the aspiration for a broader right to what is necessary beyond the material to lead a satisfying life. This refers to those who are alienated from how the urban is organized and aspiring change. The two elements have to be seen as complementary; not as contradictory. As Marcuse explains, the urban space is economically stratified along following categories: a) the *excluded*; people who are marginalized and having no protection of formal labour laws, b) the *working class*; the materially exploited including both blue- and white-collar workers. Together these two groups form what Marcuse describes as the *deprived*. Further there are c) the *small business people*; small entrepreneurs, the craftsman and so forth; d) the *gentry*; successful business persons, professionals, high paid employees in multi nationals, e) the *capitalists;* owners and decision-making managers of large businesses, f) the *establishment intelligentsia;* which includes much of the media, academics, and others

[185] Kafui A Attoh, 'What Kind of Right is the Right to the City?' [2011] 35 (5) Progress in Human Geography 669.
[186] Peter Marcuse, 'Whose Right(s) to What City?' in *Cities for People not For Profit* (n 67).

active in ideological aspects of production process and f) the *politically powerful*; those in or aspiring to high public office[187].

For Marcuse, demand and cry comes from those who are deprived; the underclass or poorer sections in the working class; not from the gentry, the established intelligentsia or the capitalists. In a cultural sense, the demand for change comes from alienated sections; those who are oppressed along lines of gender, race, sexual orientation and so forth; the youth, artists and critical intelligentsia and also the insecure. In other words, there are sections in the society that already have power and privilege and already having the 'right' to the city; such as 'financial powers, the real estate owners and speculators, media owners and the political elite'. Therefore, for the notion the 'right to the city' to be meaningful; 'its not *everyone's* right that we are concerned, but the right of *those who are deprived and discontented'*[188].

The second question is related to the content of the right. The excluded in the city are deprived of a number of separate rights; right to adequate living standards, housing, healthcare, education, democratic participation in decision-making and so forth. Marcuse argues that the right to the city means something *more* than access to separate individual rights. As he explains:

> 'The right to the city is a moral claim, founded on fundamental principles of justice. "Right" is not meant as a legal claim enforceable through a judicial process today (although that may be part of the claim); rather, it is multiple rights that are incorporated here: not just one, not just a right to public space, or a right to information and transparency in government, or a right to access to the centre, or a right to this service or that, but the right to a totality, a complexity, in which each of the parts is part of a single whole, to which the right is demanded'[189].

In other words, the right to the city is the singular right of the excluded for emancipation; to overcome their exclusion and to achieve equal status both in political and socio-economic terms in the urban space. It is a collective right envisaging to ensure social justice in urban governance. Individual rights such as socio-economic rights might comprise elements of this broader notion; but the notion cannot be reduced to its constitutive individual elements. Marcuse draws the analogy of citizenship to further explain this dimension. Citizenship involves a set of rights; the right to vote, protection of law and so forth. But a claim for citizenship is not a mere claim for these separate rights; 'it is a claim for a totality; a single status that provides all these rights as a part of the right to that singular status'[190].

[187] ibid 32.
[188] ibid.
[189] ibid 35.
[190] ibid.

The distinction Marcuse makes between right to the city and 'rights in the city[191]' is important to understand this dimension. As mentioned before, in the city there are separate demands for separate rights in the city. But having a singular right for the city is important since, from an organizational point of view, it enables different movements struggling with separate issues to recognize their common interest and to form alliances. Campaigns for separate rights might be co-opted by the establishment in a divisive manner. For example, the demand for decent employment might be addressed by establishing factories polluting the urban environment and creating problems for surrounding communities. A holistic view of right to the city; conceiving the interrelated nature of different demands affords to envision a city that is beneficial for all without exclusion. Addressing plural rights in a separate manner may provide solutions for separate problems in the short run; but it cannot transform the system as a whole[192].

The other dimension Marcuse highlights is the antagonistic nature of the right to the city. The claim to the right to the city by the excluded inevitably entails confrontation with interests that already dominate urban governance. For instance, in the current form of urban development, property interests precede the use-based interests of other inhabitants and in that sense the 'rights' of financiers, developers and large businesses are well received. To reclaim the urban for the excluded, the dominance of property interests; or 'rights' of the privileged have to be reversed or curtailed. As Marcuse notes: '.. to gain rights for those that do not have them will involve eliminating some rights for those that do: the right to dispossess others, to exploit, to dominate, to suppress, to manipulate the conduct of others. [..] In the long run, winning the right to the city for all may be a win–win game for all, but in the shorter run it will involve conflict, many winners, but also some losers. To pretend otherwise is deceptive and strategically misleading[193].'

The third question is to what sort of a city that the excluded should aspire? Drawing from Lefebvre, Marcuse insists that right to the city cannot be reduced to a notion of merely granting access for urban services within the framework of the existing city that is built on unjust foundations. This demands a transformation of the framework itself. The entire premise of the urban fabric has to be reconstructed incorporating concepts such as 'justice, equality, democracy, beauty, accessibility, environmental quality, support for the full development of human potentials or capabilities and the recognition of human differences[194]'.

[191] Peter Marcuse, 'Rights in Cities and the Right to the City?' in Ana Sugranyes and Charlotte Mathivet (eds), *Cities for All: Proposals and Experiences towards the Right to the City* (Santiago: Habitat International Coalition, 2010) 89.
[192] ibid, 90-91.
[193] Marcuse (n 186) 35.
[194] ibid 36.

Apart from Marcuse, David Harvey; another prominent urban theorist refers to the right to the city as a part of the 'collective turn' in human rights characterized by rights arising out of a certain group identity; such as workers' rights, women's rights, rights of minorities and so forth[195]. As Harvey points out, the right to the city is an empty signifier. This means, the meaning of the term depends on how social forces define the notion. The rich and the economic elite can also claim for their right to the city. Following Lefebvre Harvey defines the right from the point of view of the dispossessed in the urban space. The right to the City is 'something more than individual or group access to the resources that the city embodies; it is the 'right to change and reinvent the city more after our heart's desire[196]'.

The crucial aspect of the right to the city is the issue of how urban wealth is managed. Thus, 'greater democratic control over the production and use of the surplus' is essential for the right to be meaningful[197]. The urban economy always produces a surplus; and how this surplus is distributed is a contested issue. Prior to the rise of neo liberalism, the state appropriated a significant portion of the surplus in the form of progressive taxation and invested it in social welfare services. But under neo liberal conditions, the state has increasingly become an entity integrated with corporate interests and the current form of urbanization is defined by this relationship. To reverse this situation, the share of surplus that comes under public control should be increased; and for that, the state should be taken back under popular democratic control[198]. In other words, people should have a larger stake in deciding how surpluses should be deployed; and for this purpose, those who are dispossessed should assert their power on decision making[199].

This aspect of democratizing decision making is also a central tenet of the reading Mark Purcell offers to the right to the city. As he explains, the restructuring of political-economic processes has brought enormous changes in structures of urban governance; and that has had a 'disenfranchise effect' on urban inhabitants[200]. In other words, the control of inhabitants over decisions which shapes the city is decreasing. He describes principles of participation and appropriation as crucial in formulating a response to this effect. In terms of participation, inhabitants should have the central say in decision making. This does not mean that the decision should be made entirely by the inhabitants; but they definitely should play a vital role[201]. In this endeavour, he embraces the need of visualizing participative alternative structures of governance that moves beyond the framework of traditional liberal democratic framework.

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[195] Harvey (n 26) 3.
[196] ibid, 4.
[197] ibid 22.
[198] ibid 23.
[199] David Harvey, 'The Right to city' [2008] 53 New Left Review 23 40.
[200] Mark Purcell, 'Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant' [2002] 58 Geo Journal 99.
[201] ibid,102.

4.3 Social Movements and The World Charter for the Right to the City (2005)

Both in the Global North and the South, there has been a proliferation of various social movements fighting on different issues in the recent few decades. The slogan right to the city has provided these movements an enlightening discourse to frame their demands[202]. Apart from invoking it as a slogan, some social movements have also attempted to propose a legal framework to define the right as a part of the international human rights system. Theorists such as Lefebvre, Marcuse or Harvey refer to the right in a political sense; they do not provide a concrete framework to define the right to the city as a legal conception. In this sense, the intervention of social movements is significant as it allows to envisage a model the right could be implemented in a practical sense. The adoption of the *World Charter for the Right to the City* (2005) represents a landmark moment in this trajectory. The Charter was the outcome of the decade long work bringing together the inputs of numerous social movements, intellectuals and civil society organisations[203]. The formulation of the Charter sprung from the World Social Forum initiative founded by social movements in opposition to neo liberal globalisation. The Charter does not have legal standing under international law since it is only a civil society declaration. However, it is formulated with the view that in the future it would be adopted as a human rights instrument by international human rights bodies[204]; or at least would provide a model for such bodies to develop a similar framework[205].

The Charter warrants closer attention due to this significance. The preamble of the Charter proclaims that it envisions a sustainable model of society and urban life countering the problematic tendencies characterizing contemporary urbanisation; such as concentration of income and power, poverty and exclusion, environmental degradation, social and spatial segregation and privatization of common goods and public spaces. This new model is based on the principles of solidarity, freedom, equity, dignity, social justice and respect for different urban cultures; as well as balance between the urban and the rural. Further, it intends to shift the traditional focus of improvement of quality of life focusing on housing to a broader vision of initiating a new way of promotion of civil, political, economic, social, cultural and environmental rights at the scale of the city and its rural surroundings. It envisages the just distribution of the benefits and responsibilities resulting from the urbanization process; and this entails

[202] Anna Domaradzka. [2018]. 'Urban Social Movements and the Right to the City: An Introduction to the Special Issue on Urban Mobilization', vol 29 issue 4 International Journal of Voluntary and Non-profit Organizations 607.
[203] The first version of the Charter was adopted in 2004 in the First Social Forum of the Americas. The revised second version was adopted in 2005 in the World Urban Forum summit held in in Barcelona.
[204] Enrique Ortiz, 'The Construction Process towards the Right to the City: Progress Made and Challenges Pending' in *Cities for All: Proposals and Experiences towards the Right to the City* (n 142) 117.
[205] Some critics point out that these attempts of developing a legal framework has neglected the radical emancipatory aspect of the original conception of the right to the city as proposed by Lefebvre. It has been argued that the utopian vision of Lefebvre of transforming the capitalist city is absent in these attempts and they instead forwards a view of advocating more inclusion rather than transformation. For such critique *see* Purcell (n 200)

fulfilment of the social functions of the city and of property, distribution of urban income and democratization of access to land and public services for all citizens; especially those with less economic resources[206].

Based on this vision, Article 1 of the Charter defines the right to the city as 'the equitable usufruct of cities within the principles of sustainability, democracy, equity, and social justice'. This is the collective right of the inhabitants of cities; particularly of the vulnerable and marginalized groups. The right encompasses all the civil, political, economic, social, cultural and environmental rights that are recognized by international human rights treaties[207]. In this manner, the notion is built on indivisibility of human rights. It recognizes urban territories and their rural surroundings as spaces of the exercise and fulfilment of collective rights 'as a way of assuring equitable, universal, just, democratic, and sustainable distribution and enjoyment of the resources, wealth, services, goods, and opportunities that cities offer[208]'. Thus, the right to the City also includes 'the collective rights to development, healthy environment, enjoyment and preservation of natural resources, participation in urban planning and management and historical and cultural heritage[209]'.

The Charter proposes following principles and strategic foundations in defining the content of the right to the city; a) full exercise of citizenship and democratic management of the city, b) social function of the city and urban property, c) equality and non-discrimination, d) special protection of groups and persons in vulnerable situations, e) social commitment of the private sector and f) promotion of the solidary economy and progressive taxation policies[210]. Some of these principles entails innovative dimensions. For instance, under democratic management, the Charter recognizes the right of citizens to participate through direct and representative forms in determining public policies and municipal budgets[211]. The reference to *direct forms* is important, since it encourages to develop alternative forms of democracy based on active mass participation. Second, the Charter recognizes the social function of the city as its primary function. The social function refers to guaranteeing all inhabitants full usufruct of the resources offered by the city. Thus, the city must assume the realization of projects and investments to the benefit of the urban community as a whole[212]. Thus, it is expected that 'collective social and cultural interest should prevail above individual property rights and speculative interests[213]' in formulating urban policies. Further, the extraordinary income currently captured by real estate and private sector businesses should be redirected in favour of social programmes that guarantee right to

[206] Preamble, World Charter for the Right to the City (hereinafter 'Charter').
[207] Charter, Article I 1.2.
[208] ibid.
[209] Ibid.
[210] Charter, Article II.
[211] Charter, Article II 1.1.
[212] ibid 2.1.
[213] ibid, 2.4.

housing and a dignified life for the sectors living in precarious conditions[214]. The notion of prioritizing collective social interest over individual property interests; and direct reference to redistribution is a radical nuance; since it allows for measures to address issues pertaining to urban equality in clear terms. This nuance is further illuminated in the Charter's reference on promoting progressive taxation systems that assure just distribution of the resources and funds necessary for implementation of social policies[215]'.

Based on these principles, the Charter lists a number of rights related to political participation; the right to associate, gather, manifest and the democratic use of public space, right to justice, right to public security and peaceful, solidary and multi-cultural coexistence[216]. Further, it refers to a number of economic social and cultural and also environmental rights as constitutive rights of the right to the city. This includes; right to water and access and supply of domestic and urban public services, public transportation and urban mobility, housing, work and healthy and sustainable environment[217]. The Charter relates these rights with the notion of social justice. For instance, it calls for regulation of fees of public services ensuring access for economically disadvantaged groups[218]. Further, *vis-à-vis* right to housing, the charter requires cities to establish subsidies and finance programmes for land and housing acquisition, tenure regularization and improvement of precarious neighbourhoods and informal settlements[219]. It affirms the right to security of housing tenure and the right to protection from eviction, expropriation or forced or arbitrary displacement. The cities have a responsibility to protect tenants from profiteering and arbitrary evictions; and also, a responsibility to regulate housing rent[220]. Another notable feature is the role attributed to social organisations and movements that working on defending housing rights. The charter requires cities to offer special attention, promotion and support to such organizations, treating them as direct interlocuters[221].

The Charter envisions the obligation of international bodies and governments in its all levels; national, regional, local, municipal and so forth for effective implementation of the right to the city and its constitutive rights. The cities are obliged to use the maximum available resources to fulfil the obligations arising from the charter[222]. Further, an effective system of indicators has to be established to evaluate and monitor the implementation of the charter. The violation of the right can occur in administrative, legislative or judicial forms. In case of violation, all persons have the right to access and

[214] ibid, 2.5.
[215] ibid, 2.6.
[216] Charter, Articles VIII-XI.
[217] Charter, Articles XII-XVI.
[218] Charter, Article XII 2.
[219] Charter, Article XIV 2.
[220] Charter, Article XIV 7.
[221] Charter, Article XIV 8.
[222] Article XVIII.

use of effective administrative and legal resources seeking rectification; which may take the form of reparations and reversal of the act or the omission committed[223].

4.4 The United Nations New Urban Agenda (2016)

Further to the World Charter, the most significant development *vis-à-vis* the right to the city in the international institutional level so far is the formal recognition of the concept by the UN-Habitat; the United Nations special agency on human settlements. The New Urban Agenda (NUA) adopted in 2016 at the Habitat-III Conference held in Quito, Ecuador recognizes the right to the city as a foundation of the Agenda[224]. NUA entails two sections; the Quito Declaration on Sustainable Cities and Human Settlements for all and the Implementation Plan of the New Urban Agenda. The UN General Assembly endorsed the NUA through a resolution (A/RES/71/256) adopted in December 2016. Thus, it could be argued that the notion the right to the city has now entered the domain of international law as a non-binding soft law notion through the adoption of this resolution. The formulation of the NUA was based on a set of policy papers the UN-Habitat has developed. Reference to these papers in the sense of *travaux preparatoires* is helpful in understanding the precise nature the right to the city has been defined[225].

The NUA identifies the right to the city as a vision of 'cities for all'; which refers to 'the equal use and enjoyment of cities and human settlements; seeking to promote inclusivity and ensure that all inhabitants, of present and future generations, without discrimination of any kind, are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster prosperity and quality of life for all[226]'. The UN-Habitat recognizes the right to the city as entailing three pillars; spatially just resource distribution, political agency and social, economic and cultural diversity[227]. The first pillar includes; land for housing and livelihood and decommodification of urban space, preservation of urban commons, public space and biodiversity, ensuring access to basic services and infrastructure and controlling pollution, upgrading informal settlements and ensuring measures for resilience, combat climate change and disaster management. The pillar of political agency refers to inclusive urban governance; meaning ensuring effective and equal participation of all stakeholders in decision-making, inclusive urban planning, promoting inclusive citizenship, enabling participation, transparency and democratization and recognition of the agency of gender, social actors, migrations and refugees. The final pillar comprises of measures to promote livelihoods, wellbeing and welfare, poverty risk and employment vulnerability, inclusive and solidarity

[223] Articles XVII, XIX.
[224] Quito Declaration on Sustainable Cities in New Urban Agenda ¶ 11.
[225] UN Habitat, *Policy Paper I: The Right to the City and Cities for All* (New York: United Nations, 2017).
[226] ¶11.
[227] ¶24.

economy; which *inter alia* includes measures to ensure right to work, embracing identity, cultural practices, diversity, heritage and promoting safer cities[228].

This vision envisages the effective fulfilment of all internationally agreed human rights and also relates human rights with sustainable development objectives. It follows the conception adopted by the Vienna Declaration on Human Rights (1993) that human rights are universal, inter-related and inter-dependent. However, according to the UN Habitat, the right to the city also introduces a new dimension by promoting the understanding that the city is a place that strives to 'guarantee a decent and full life for all inhabitants[229]'. In this sense, the right is a collective and a diffuse right. The UN-Habitat draws the analogy of environmental rights to elaborate the collective nature of the right to the city. All citizens as a collective are entitled to environmental rights; and in a similar vein all inhabitants collectively are entitled to the right to the city[230]. As a diffuse right; the right 'belongs to present and future generations; it is indivisible and not subject to exclusive use or appropriation[231]'. The right can be exercised by populations living in institutionally recognized administrative units[232].

As mentioned before, this conception of the right to the city is at the heart of the urban development framework the NUA advances. The NUA is based on several principles. First, the principle of inclusion; assuring no one is left behind. This entails commitment to end poverty, ensuring equal rights and opportunities, ensuring socio-economic and cultural diversity, integration in the urban space, enhancing liveability, education, food security, nutrition, health and wellbeing; promoting safety and eliminating all forms of violence, providing equal access for all to physical and social infrastructure and basic services, as well as adequate and affordable housing[233]. Further are the principles of sustainable and inclusive economies and sustainable environment[234]. Based on this premise, the NUA aims to 'readdress the way we plan, finance, develop, govern and manage cities[235]'. The governments have a leading role in implementing this vision; and also, local governments have an equal important duty of contribution. It also requires the involvement of civil society and other relevant stakeholders[236]. The NUA envisages to achieve an 'urban paradigm shift[237]' through implementing these principles.

The difference between the World Charter and the NUA is, while the former attempts to frame the right to the city as a human right in the international legal system, the latter integrates the right to the city

[228] ¶ 29-32.
[229] ¶ 24.
[230] ¶ 25.
[231] ¶ 26.
[232] ibid.
[233] ¶ 14 (a).
[234] ¶14 (b), (c).
[235] ¶ 15 (a).
[236] ¶ 15 (b).
[237] ¶ 15.

with the international development agenda. If the objective of the drafters of the Charter becomes successful *i.e.* if international human rights bodies adopt the charter; or a similar instrument as a human rights instrument, that has the capacity of further informing the international development agenda through providing a more detailed definition to the conception of the right to the city.

4.5 Conclusion

The discussion of this chapter explored the evolution and some fundamental aspects of the right to the city as developed so far. The idea initially was a politico-philosophical notion introduced by Lefebvre and further developed by urban theorists in their intervention to popularise an alternative conception of production and reproduction of the urban space. This intervention entails several important themes; the critique of contemporary urbanisation for prioritizing exchange value over use value of inhabitants, the formulation of the right to the city as the right of the excluded to appropriate the urban space, the recognition of participation as the mean of appropriation, understanding the right as an extension of the social contract and redefining the notion of citizenship in the urban realm; and finally, theorizing the right to the city as a singular right constitutive of different elements facilitating to adopt a holistic approach to transform existing urban governance practices.

Social movements were inspired by the idea; and their activism has now bought the discourse on right to the city from the political domain to the legal domain. The World Charter and the NUA are important landmarks in this endeavour; and these instruments represent a concrete effort to define and implement the right to the city in practical terms. As critics have noted, there is a difference between the original Lefebvrian idea of the right to the city and how the pragmatic approach of social movements has attempted to define the notion[238]. While the radical notion of Lefebvre envisions the full transformation of the capitalist city, the pragmatic approach represents a more moderate; or a reformist attempt in redefining the norms that informs urban governance. Though the scope of this thesis does not allow us to discuss this difference in depth, it should be stated that the difference does not necessarily means that the two approaches are contradictory in a fundamental sense. For instance, Lefebvrean ideas such as participation and the pre-eminence of use value over exchange value are also reflected in the World Charter albeit in a moderated and a contained form. Despite this moderation, the pragmatic approach derives its foundations from critical urban scholarship, and it is impossible to understand the former without reference to the latter. The contribution of the pragmatic approach is that it relates the right to the city with mainstream human rights conceptions; such as civil and political rights, socio-economic rights, the indivisibility of human rights and so forth. From a legal perspective, this approach is important in formulating a binding model to implement the right to the city in practical terms.

[238] (n 200)

Chapter 5: The Right to the City in Practice: The Brazilian Experience

5.1 Urban Reform in Brazil

Brazil is one of the pioneering countries that have provided explicit legal recognition to the right to the city. The country is the most populated in South America, with a population of 204.5 million. Similar to other developing countries, Brazil underwent a significant urbanization process during the late 20th century. The urban population in the country increased from 44.6% in 1960 to 84.3% in 2010[239]. This process was characterized with manifold problems; including notorious levels of socio-economic inequalities, environmental degradation, spatial segregation and urban poverty. Informal settlements; known as *favelas* became a defining feature of the peripheral city that was characterized by precarious living conditions, lack of access to urban services and legal title for occupying land.[240].

Discussions on urban reform in Brazil dates back to 1960s. In 1963, the Brazilian Institute of Architects adopted a set of proposals dealing with urban housing. Need for reform was formally endorsed by the then president Joao Goulart[241]. However, following the establishment of the military dictatorship in 1964, initiatives for urban reform were largely suspended. Under the dictatorship, political power was highly centralized; and the issue of urban exclusion was dealt in a technocratic manner; often neglecting issues related to land and property ownership[242]. The fall of the dictatorship in 1985 opened up a renewed space for movements for urban reform. In 1987, the newly formed National Movement for Urban Reform; an alliance of different urban social movements submitted a comprehensive set of legislative proposals to the National Constituent Assembly under the slogan 'right to the city for all[243]'. After a prolonged contestation with the conservative forces backed by the real estate sector lobbies, finally a compromise was reached by including a chapter called 'urban policy' in the new Federal constitution[244]. The new constitution laid the foundations of a new era of urban reform; a project aiming to construct a new political-legal order for cities[245].

[239] Abigail Friendly, 'The Right to the City: Theory and Practice in Brazil' [2013] 14:2 Planning Theory and Practice 158.
[240] Edesio Fernandes, 'Constructing the Right to the City in Brazil' [2007[16 Soc. & Legal Stud. 201.
[241] Paulo Romeiro, Irene Maestro Sarrión dos Santos Guimarães, Vanessa Koetz, 'The Right to the City in Latin America' in *Moving Toward the Implementation of the Right to the City in Latin America and Internationally* (Global Platform for the Right to the City,2015) 8.
[242] Erminia Maricato, 'The Statute of the Peripheral City' in *The City Statute in Brazil: A Commentary* (Sao Paulo: Cities Alliance and Ministry of Cities, 2010).
[243] n (241) 9
[244] Edesio Fernandes, 'Implementing the Urban Reform Agenda in Brazil: Possibilities, Challenges, and Lessons' [2011] 22:3 299, 303
[245] ibid.

The chapter on urban policy of the 1988 Constitution entails two articles. Article 182 provides that urban development policy should aim ordaining the full development of the *social function of the city* and the well-being of its inhabitants. This provision recognizes the municipality as the entity having responsibility to enhance urban development and thus decentralizes urban governance. The outstanding innovation of the constitution is the recognition of social function of the city as the purpose of urban development. Municipalities having over twenty thousand inhabitants are expected to adopt a Master Plan for urban development; and this master plan is the main tool of ensuring the social function of the city. The article further grants powers for municipalities to adopt measures to utilise underused or unused urban property for meaningful purposes[246]. In addition, article 183 of the constitution ensures legal title for urban land possessed by individuals on the grounds of adverse possession. Thus, a person occupying urban land up to 250 square meters without interruption and opposition for five years becomes eligible to acquire the domain of the land; provided that she does not own any other urban or rural property.

Following the adoption of the constitution, various municipal authorities; particularly authorities governed by the centre-left Workers Party (PT) initiated schemes to enforce these constitutional provisions. In this phase 'Brazil became a laboratory of sorts for new strategies of local governance and direct democracy[247]'. However, due to the absence of any precise law regulating the constitutional provisions, there was ambiguity on the scope of these provisions and conservative legal arguments continued undermining progressive initiatives. In order to address this lacuna, the government enacted a new law in 2001; the 'City Statute' (Law No. 10.257 of 10 July 2001) establishing a detailed framework for the exercise of right to the city.

The City Statute aims to establish 'norms for public order and social interest which regulate the use of urban property in favour of the *common good, safety and well-being of citizens* as well as environmental equilibrium[248]'. The statute in line with the constitutional norm affirms 'full development of social functions of the city and of urban property[249]' as the objective of urban policy. Further, it provides a number of guidelines municipalities should adhere to in formulating urban policies[250]. Some of these guidelines are as follows: First, municipalities should ensure the right to sustainable cities; which is defined as 'the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and leisure for current and future generations[251]'. Second, popular participation in urban decision making should be enhanced. Thus, participation of population

[246] The measures recognized by the Constitution are as follows: compulsory use of unutilised land, progressive taxation and expropriation.
[247] Fernendes (n 244) 304.
[248] City Statute, Article 1.
[249] City Statute, Article 2.
[250] The statute provides 16 guidelines in total. For the complete list of guidelines refer article 2 of the statute.
[251] Article 2 (I).

and representative associations of various segments of the community in formulating, executing and monitoring urban development should be assured[252]. Third, avoidance and correction of distortions of urban growth has to be an objective of urban planning. This aspect should be taken into consideration in formulating plans *vis-à-vis* spatial distribution of the population and economic activities of the municipality[253]. Fourth, the municipalities should control land use in order to avoid the improper use of urban real estate, incompatible or inconvenient use of urban land and speculative retention of urban real estate which results in underutilization or non-utilization of urban property[254]. Fifth, it should be ensured that benefits and burdens resulting from urbanization process are fairly distributed[255]. And further, tools of economic, tax and financial policy; and of public spending have to be adopted to prioritize investment 'that generate the fruition of the goods by different social segments[256]'.

As Edesio Fernandes identifies, the legal framework the City Statute establishes involves multiple dimensions. Firstly, in the conceptual level, the law provides elements to interpret the constitutional principle of social function of urban property. Secondly, it details numerous legal and financial instruments for the construction of a different urban order. Third, the statute indicates processes for the democratic management of cites; and fourth it identifies instruments for comprehensive regularization of informal settlements in private and public urban areas[257]. Each of these dimensions warrant our closer attention in order to understand how the right to the city is implemented in Brazil in concrete terms.

5.2 The Rationale of the New Urban Order: Social Function of the City and Property

The concept social function of urban property provides an alternative paradigm to administer urban space; which is fundamentally different to the classical liberal notion of individual property rights. Historically, the Brazilian law on property informed by the civil law tradition was built on the premise that attribute paramount importance to individual ownership[258]. Individual property rights regime is founded on the understanding that the individual property owner is the absolute master of her property. Ownership rights are only limited by the rights of others and public interest. The individual owner can use, reap the benefits of and dispose the property according to her preference as long as the use does not contradict with these limitations[259]. For example, the Napoleonic Code which is one of the pioneer texts in legal history that reflects the classical liberal notion of right to individual property states;

[252] Article 2 (II).
[253] Article 2 (IV)
[254] Article 2 (VI).
[255] Article 2 (IX).
[256] Article 2 (X).
[257] Fernendes (n 240) 212.
[258] Fernendes (n 244) 305.
[259] Sheila R Foster and Daniel Bonila, 'Introduction: The Social Function of Property: A Comparative Law Perspective' [2011] vol 80:3 Fordham Law Review 101.

> 'Property is the right of enjoying and disposing of things in the most absolute manner, provided they are not used in a way prohibited by the laws or statutes. No one can be compelled to give up his property, except for the public good, and for a just and previous indemnity[260]'

The 1916 Brazilian Civil Code reflecting the same principle provided that 'this law assures to the owner the right to use, enjoy and dispose of his property, and to recover it from the power of whoever unjustly possesses it[261]'. In this sense, limits to individual property rights in the classical liberal paradigm are *external limits* that can only be invoked if the use of property endangers individual rights of others or public interest. For instance, within the Brazilian traditional civil law tradition, the economic content of property is to be solely determined by the individual interests of owners. The right to build was merely treated as an associated part of property rights. There was no space for the principle that the state can capture the surplus value resulting from public investment that has fused with individual property value; or the state can intervene in determining the economic content of property in order to promote inclusiveness in the urban order[262].

The problem with this individualist paradigm is that it contributes in perpetuating and exacerbating socio-economic inequalities. The concentration of property in the hands of certain sections of the population at the exclusion of others results in inequalities in terms of wealth and income. Generations of early theorists have referred to this impact[263]; and even Adam Smith has identified that 'wherever there is great property there is great inequality[264]'. In the urban context, individual ownership in the form of real estate speculation leads towards the concentration of urban wealth in the hands of financiers and real-estate developers; simultaneously excluding the urban poor to the urban periphery. The absolute right to use property as the owner please facilitates property speculation; property is often kept unused or underused for speculative purposes while the urban excluded live precarious lives in peripheral slums.

The alternative conception of social function of property was first proposed by the French Jurist Leon Duguit in his critique of liberal property rights[265]. For Duguit, property is a social function rather than a right[266]. He is critical of the premise liberal property rights are built; the assumption of the existence of an abstract individual isolated from the society. On the contrary, individuals are interconnected beings and depend on each other to fulfil their needs. This interdependence is a defining character of

[260] Napoleonic Code § 544-545
[261] The Civil Code of Brazil (Law no.3,071 1916) sec. 524.
[262] Fernendes (n 240) 209.
[263] For example, *see* David S. Siroky and Hans-Jörg Sigwart. 'Principle and Prudence: Rousseau on Private Property and Inequality'. [2014] vol. 46, no. 3, 2014, Polity, 381 for an analysis of Jean-Jaques Rousseau's conception of private property.
[264] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) (eds) R.H. Campbell and A.S. Skinner (Oxford University Press, 1976) 709 10.
[265] Leon Duguit first articulated his conception in a series of lectures in 1911 delivered in Buenos-Aires.
[266] Foster and Bonila (n 259) 103.

the social reality[267]. Further, liberal property rights serve only the interests of the individual; not of the larger community. It 'obscures the connections between the economic needs of the community and the wealth that is protected through property rights'[268]. For Duguit, the owner should not have the entitlement to do whatever with her property; she is obliged to make it productive and '.. the wealth controlled by owners should be put at the service of the community by means of economic transactions[269]'. Therefore, by definition, right to individual property is not absolute; it co-exists with its social function which constitutes an *internal limitation* to right to property. Thus, if the social function is not met, the state should intervene to enforce the function through means such as taxation or expropriation[270].

Thus, in the Brazilian context, the recognition of social function of urban property marks a rupture from the individualist property regime paradigm that dominated the country since the times of 1916 Civil Code[271]. This drive was further strengthened by the adoption of a new Civil Code in 2002 which subjects the exercise of the owner's right to property to the fulfilment of social, economic and environmental functions[272]. The new Civil Code which defines the duty of solidarity as a structural element of right to property resembles 'theoretical postulates similar to Duguit's original concept of property's social function'[273].

These legal reforms recognizing social function of property as an established legal principle in Brazilian law have far reaching implications. First, it challenges the classical distinction between private and public spheres by increasingly bringing the issue of land use; that was hitherto treated as a matter belonging to the private realm into the scrutiny of the public domain. It does not abolish private property; but attempts to redefine the function of property within the light of larger interests of the community. Second, the concept imposes positive obligations on the state *vis-à-vis* individual property to ensure its social function. The state should now proactively intervene to assure that urban property serves its social function. This is in contrast to the liberal property rights regime that only imposes negative obligations on the state in relation to private property.

5.3 Legal Instruments for the Realization of Social Function

The second dimension of the City Statute is that it establishes a number of legal instruments; a 'tool box' for the use of municipalities in order to ensure the social function of the city. The statute reiterates the constitutional provision that provides for the adoption of a Master Plan for cities having more than

[267] ibid 104.
[268] ibid 105.
[269] ibid, 103.
[270] ibid.
[271] Fernendes (n 244) 305.
[272] The Civil Code of Brazil (Law. No 10,406 of January 10, 2002) §1228.
[273] Alexandre dos Santos Cunha, 'The Social Function of Property in Brazilian Law' [2011] vol 80 issue 3 Fordham Law Review 1171, 1181.

20,000 inhabitants[274]. The Master Plan which has to be formulated with public participation is the main instrument of urban development and has to be revised at least every ten years[275]. Annual municipal budgets and all other city level plans have to be organized within the framework of the Master Plan[276].

Further to national, metropolitan and municipal planning instruments, the statute recognizes following instruments: financial and tax instruments, legal and political instruments and environmental and neighbourhood impact statements[277]. Instruments coming under legal and political instruments could be further classified under following categories; a) tools for social intervention to limit free use of private property; b) tenure regularization instruments; c) instruments for development and redistribution and d) instruments on democratization of urban management[278]. Some of the instruments pertaining to restrictions on individual property rights and redistribution are discussed below[279].

Compulsory use, Progressive property Tax and Expropriation: The statute provides that the Master Plan could determine compulsory parcelling, building or use of under-utilised or unutilised urban land[280]. A property is deemed to be underutilised if the utilisation is lower than the minimum levels established by the Master Plan. The municipal administration has power to notify owners of unutilised or underutilised property to put them in to use as required by minimum utilisation level[281]. Once the owner is notified, she is obliged to ensure that the land is used for meaningful purpose within a specific time period. This instrument aims to regulate the adverse implications of retaining idle urban land for speculative purposes. The urban space is limited and owners retaining land for speculative purposes means there will be no sufficient space for other productive purposes; such as productive economic activities that can contribute to the development of the city or construction of social housing for the economically disadvantaged[282]. Measures for compulsory land use allows to ensure that private property rights are exercised in line with the collective wellbeing of the city.

Provisions for compulsory use are supplemented by the instrument of progressive property taxes[283]. If the owner does not comply with compulsory use notifications, the municipality is vested with the power to impose a tax known as the Built Property and Urban Land Tax (IPTU). The IPTU is calculated against the market value of the property and is progressively increased over years if the owner continues to

[274] City Statute, Article 41.
[275] Art. (III)
[276] Art. 40 (I)
[277] See articles 4 (IV), (V) and (VI). Altogether the statute recognizes around 30 instruments that can be used to realise the social function of the city.
[278] Ana Maria Furbino Bretas Barros; Celso Santos Carvalho; Daniel Todtmann Montandon, 'Commentary on the City Statute' in *The CIty Statute of Brazil: A Commentary* (n 242) 96.
[279] See the subsequent sections of the chapter for a discussion on the instruments pertaining to democratic participation and improvement of informal settlements.
[280] City Statute, Article 5.
[281] City Statute, Article 5 (II).
[282] Commentary, n (242) 97.
[283] City Statute, Article 7.

disregard the compulsory use requirements. The objective of calculating the tax against the market price is to discourage retaining land to take advantage from future increases of land prices. This tax is mainly designed as a mean of sanction rather than a source of revenue[284].

Further, the city authorities also have the power to expropriate underutilised urban property under particular circumstances[285]. If the owner continues non-compliance *vis-a-vis* compulsory use for five years since the IPTU is charged, the authorities can proceed to expropriation of land and compensation will be made in the form of public debt bonds. Expropriation is an extension of the sanction regime established by the IPTU provision. The expropriated land has to be used by authorities for appropriate use in line with social function of property. If authorities fail to do so it amounts to 'administrative impropriety'[286] and accordingly the responsible public officials could be hold accountable.

The Onerous Grant on the Right to Build: This instrument known as *solo criado* was first introduced in Brazil in 1970s and the City Statute identifies it as a tool to serve several functions; most importantly, to ensure that costs and benefits of urbanisation are fairly distributed; and investment of public authorities in infrastructure that is incorporated in to increased property values are recovered[287]. This provision applies to constructions and buildings that exceed a basic coefficient level established by the Municipality. In other words, it refers to 'construction of buildings with several floors creating new usable areas not directly founded on natural land[288]'. The space created exceeding the basic level is considered as 'created land' (*solo criado*).

The Master Plan can delimit areas that this provision is applicable. In such areas, any person who builds exceeding the basic coefficient level is obliged to make a counterpart payment; a form of fee to municipal authorities[289]. The funds generated through this instrument should be invested by authorities for social purposes stipulated in article 26 of the statute[290]. These purposes include, *inter alia* regularization of land ownership, execution of social housing projects, establishing land reserves, implantation of urban and community equipment and the creation of public spaces for leisure and green areas. The onerous grant on right to build allows the community to capture a portion of the surplus generated in certain sections in the economy; especially in the real estate sector; and to channel the surplus towards social purposes. In other words, it ensures that 'privileged property owners living in

[284] Commentary, n (242) 98.
[285] City Statute, Article 8.
[286] City Statute, Article 52. This article stipulates a number of breaches that amounts to administrative impropriety enabling citizens to exercise their collective right against administrative non-compliance with the obligations conferred by the City statute.
[287] Commentary (n 242) 107.
[288] Suely Mara Araujo, 'Solo Criado: the Brazilian Experience' (Conference Paper presented at International Research Group on Law and Urban Space (IRGLUS)- 9th 'Law and Urban Space' Workshop, 2013).
[289] City Statute, Article 29.
[290] City Statute, Article 31.

expensive high-rise apartments [..] should contribute to paying for the costs of infrastructure in affluent, high density districts[291]'.

Right to Pre-emption: Article 25 of the City Statute provides the municipality right to pre-emption; a preferential right to acquire properties that are being conveyed by individuals. The Master Plan has to delimit areas that this provision is applicable[292]. In such areas, when an owner prepares to transfer the title of a property to a third party, she should also notify the municipality her intent to transfer. Following notification, the municipality could decide within thirty days whether it is interested in acquiring the property. If it prefers to acquire, the market price of the property that a third-party offer should be paid to the owner upon purchase. The municipality is obliged to use property acquired in this manner for the social purposes specified in the statute.

5.4 Democratic Management of the City and Public Participation

A further important dimension of Brazilian urban reform is the focus on strengthening the democratic quality of urban decision making through increased public participation. The City Statute states; '[..] administrative entities of metropolitan regions and urban conglomerations must assure the compulsory and substantive participation of the population and of associations representing different segments of the community, in order to guarantee to them direct control of administrative activities as well as assuring the population of complete exercise of citizenship[293]'. The statute stipulates a number of instruments to realize this objective; urban policy councils, debates, hearings and public consultation, conferences on subjects of urban interests, popular initiatives related to proposed laws / plans / urban development projects; and participatory budgeting[294]. For the purpose of our discussion I would focus on two of these procedures; democratic urban planning and participatory budgeting.

***The Master Plan and Public Participation*:** The City Statute requires municipalities to formulate the Master Plan which is the principle instrument of urban policy with broad public participation. The idea of a participatory Master Plan signifies a departure from the traditional elitist urban planning approach in which an enlightened elite deciding how the city should be organised[295]. Participatory Master Plans opens up the space for an alternative approach; a bottom-up approach for decision making. The former Brazilian President Lula Da Silva referred to the instrument as 'a pact between the population and its territory[296]'. According to the City Statute, municipalities should organise public hearings and debates with participation of population and associations representing different segments of the community in formulating the Master Plan. Further, documents and information pertaining to planning should be made

[291] Friendly (n 239) 164.
[292] City Statute, Article 25 (I).
[293] City Statute, Article 45.
[294] City Statute, Articles 43, 44.
[295] Teresa Caldeira and James Holston, 'Participatory urban planning in Brazil' [2015] vol 52 (II) Urban Studies 2001, 2004.
[296] ibid, 2005.

public; ensuring access to information for the interested parties[297]. The rationale of these measures is to enable the community; especially historically disadvantaged and socio-economically excluded sections to take part in decision-making in order to shape the process of urban governance[298].

There exists an array of empirical studies examining how the element of public participation *vis-à-vis* the Master Plan is implemented in various Brazilian cities. To further elaborate the practice, I will draw from a study that investigates how the Master Plan in *Sao Paulo*; a major Brazilian city was formulated in 2002[299]. To enforce the guidelines of the City Statute, in 2002, the Sao Paulo city council organised two rounds of popular participation sessions. The first round was to gather public suggestions and ideas to develop the version of the plan that has to be adopted. The City Council organised 26 public hearings both at the council and in different regions in the city. Furthermore, numerous thematic meetings were held. These sessions were open for all citizens and a draft plan was presented for the review of popular assemblies. Participants were free to make their remarks and also forward their own proposals. After the first round, the initial draft is significantly modified by incorporating suggestions of the citizenry presented during the first round. This modified draft is again forwarded for further discussions in the second round. Once the second-round ends, the final draft is referred to the City Council for ratification.

According to the study, mainly two types of groups participated in Sao Paulo hearings; professional groups comprising planners and architects and members of associations. The latter included; representatives of popular movements, groupings representing upper-middle class neighbourhoods and representatives of the real estate industry[300]. A number of proposals and suggestions were forwarded by each of these sections often reflecting particular interests the respective groups represent[301]. Thus, the participatory assemblies functioned as forums for diverse social forces to engage in a deliberative process to formulate a collective vision for the city. The final version of the Master Plan adopted by the City Council contained measures to address inequality and dispersion in the city; providing for the regularization of the 'illegal' periphery and to break patterns of unbalanced spatial dispersion[302]. It further provided several measures to ensure public participation in monitoring the implementation of the Plan. Thus, a) Biannual Municipal Conferences on Urban Policy and b) a Municipal Council of Urban Policy were created. The latter is a consultative body consisting of 48 members; eight elected by population and the rest selected by the municipal administration, 'entities of civil society', professional

[297] Article 40 (IV).
[298] Romeiro et al. (n 241) 14
[299] The description is based on the study by Caldeira and Holston (n 295).
[300] ibid 2009
[301] In this study the researches make some important observations on certain limitations of the public participation process. For instance, in public hearings wealthy sections of the city invested a lot in presenting their views and 75% of the proposals submitted came from these sections. Further, due to the absences of precise criteria to determine representation in hearings there were no proposals originating from the poorest districts in the city.
[302] Caldeira (n 295) 2007.

associations and economic sectors[303]. The role of these mechanisms is consultative; and their proposals do not have a binding affect. However, these measures aimed to provide space for the public to check the role of the city executive in implementing the plan.

Participatory Budgeting: Next to the adoption of the 1988 Constitution, a number of Brazilian municipalities adopted the innovative conception of participatory budgeting (PB) as a mean of democratizing urban governance. PB allows citizens to participate in determining fiscal priorities of a specific part of the municipality budget. Under traditional forms of representative democracy, the issue of public spending is exclusively decided by elected representatives. Participatory budgeting presents a different model; in which representative democracy is fused with elements of direct forms of democracy.

Since 1989 a number of Brazilian cities have initiated PB procedures[304]. I refer to a specific example; the PB process in the city *Porto Alegre* to elaborate the main aspects of the mechanism. Porto Alegre first implemented PB in 1989 and since became a celebrated example in academic literature as an effective model of participatory budgeting[305]. The PB process in Porto Alegre comprises three phases spreading throughout the year[306]. The city is divided in to sixteen districts for the purpose of PB. The first phase lasts from March to June in each year; and entails two rounds of deliberation. In the first round, large Plenary Assemblies are organised which are open to all citizens. In these assemblies, implementation records of the previous year's capital investment budget are presented for review. Further, citizens elect delegates whom will act as the link between the government and citizens throughout the next steps of the PB process[307]. The Assembly decides on thematic priorities that has to be discussed in a later stage. After this round, PB delegates and civil society groups organize grassroots level community discussions in which people in particular areas take part to discuss about specific projects and sort of investments that they prefer. Afterwards, a second round of Plenary Assemblies are convened where citizens vote on the final ranking of thematic priorities and specific investment

[303] ibid 2008.
[304] According to the World Bank 140 cities out of total 5571 municipalities in Brazil had adopted participatory budgeting mechanisms by early 2000s. *see* Deepti Bhatnagar; Animesh Rathore; Magüi Moreno Torres and Parameeta Kanungo, 'Empowerment Case Studies: Participatory Budgeting in Brazil' (Washington DC: The World Bank <https://siteresources.worldbank.org/INTEMPOWERMENT/Resources/14657_Partic-Budg-Brazil-web.pdf> retrieved on 27/04/2019).
[305] *See* Martin Calisto Friant, 'Deliberating for Sustainability: Lessons from the Porto Alegre Experiment with Pariticipatory Budgeting' [2019] vol 11 no 1 International Journal of Urban Sustainable Development 81; Celina Souza, Participatory Budgeting in Brazilian Cities : Limits and Possibilities in Building Democratic Institutions [2001] vol 13 no 1 Environment and Urbanization, 159; Laurence Piper, 'How Participatory Institutions Deepen Democracy through Broadening Representation' [2014] vol 61 no 2 Theoria 50.
[306] The description in this section is mainly based on the study by Friant (ibid). The study focuses on how PB is implemented in the time period 1998-2004.
[307] Friant (n 305) 84.

projects. Further, representatives are elected to two bodies; Forums of Delegates and Participatory Budgeting Council which will be responsible to conduct the next phase of the process.

In the second phase, the delegates of above two bodies; with the assistance of the municipality government, review the prioritisation of work and assess their urgency and feasibility. In this assessment process, delegates are required to visit particular neighbourhoods and to constantly coordinate with civil society groups. Subsequently, a final list of projects and priorities is prepared; and the municipal government formulates a cost estimation for this list. Once the estimation is produced, delegates will engage in discussions to harmonise thematic priorities with availability of resources. Finally, the draft version of the investment plan will be presented to the City Council for legislative approval. Following approval, the third phase that involves monitoring the implementation of the budget begins. The PB Council and Forum delegates work together to monitor implementation[308].

The above description demonstrates how PB could transform the nature of decision making *vis-à-vis* fiscal spending by encouraging increased community participation in the deliberative process. Though the City Council is responsible in voting for the final version of the social investment plan, the power of the Council to change the plan is limited. Therefore, the plan is mainly the outcome of a comprehensive deliberative process that involves broad popular participation. As researches show, a significant section of the participants in Porto Alegre that engaged in popular assemblies came from socially marginalised backgrounds; low income groups, women, black communities and low educated[309]. In terms of resource allocation, from 1990 to 2000, the priority areas citizens decided were; a) urban development and basic services, b) social services; health, education, housing, welfare, c) economic development and d) culture, recreation and tourism[310]. Further, it has been observed that the level of public housing, access to water, health and education facilities in poor areas of the city were significantly improved after the adoption of the PB procedures in Porto Alegre[311].
However, the effectiveness of the process depends *inter alia* on how much resources are allocated for social investment in the municipal budget. This is decided by the executive of the municipality. Citizens are only entitled to decide how the allocated money is channelled to different sectors. For instance, in Porto Alegre, allocation for PB as a percentage of the total city expenditure increased from 2% in 1989[312] to 21% in 1999[313]. But after 2004, this percentage has fallen. In 2008 PB represented 9.8% of the investment budget and this was further declined to a mere 5.4% in 2016[314].

[308] ibid 85.
[309] ibid.
[310] ibid 90.
[311] Deepti Bhatnagar *et al* (n 304).
[312] Friant (n 305) 85.
[313] N (304).
[314] Friant (n 305) 88.

5.5 Upgrading Informal Settlements

Finally, the City Statute provides comprehensive measures to regularise and enhance housing rights of those who are living in informal settlements. This is a significant intervention since forty percent of families living in urban areas in Brazil do not have legal title to the land that they live and thus were considered as illegal squatters[315]. The leading instrument of the statute to ensure housing rights for the poor is the establishment of Special Zones of Social Interests (ZEIS)[316]. The participatory Master Plan can delimit particular areas in the city occupied by low income and informal households as special zones of social interests. These areas are delimited so municipalities could focus to initiate programmes to regularize these neighbourhoods and to facilitate their integration[317].There are important implications of this measure. On the one hand, the recognition of ZEIS provides assurance for inhabitants in these areas against enforced evictions. In the past, informal settlements were treated as illegal and were often demolished in the name of rational planning. Recognition of ZEIS means such settlements are also treated as ordinary neighbourhoods and their concerns are taken into consideration in formulating urban policies[318].

Once a ZEIS is delimited, the municipality could apply specific standards of infrastructure development that are compatible with the realities of the area. For instance, in hilly or steep areas that are occupied, narrow streets or alleyways more suitable could be developed depending on the specific circumstances and needs[319]. Further, delimiting social interest zones enables to prevent such neighbourhoods from pressures of gentrification. This acts as a bulwark against eviction of informal settlers and subsequent occupation of the area by wealthier social segments attracted by increasing land prices[320]. In addition to regularizing already occupied low income spaces, this instrument can also be used to identify vacant land as ZEIS and to develop such areas for the purpose of social housing[321].

In practice, after the enactment of the City Statute, municipalities have increasingly used ZEIS in their planning strategies. The number of cities that have implemented the ZEIS provision increased from 672 in 2005 to 1799 in 2009[322]. The initial approach to upgrade ZEIS was to target these areas with traditional physical infrastructure improvements; such as regularizing roads and installing sewage

[315] Commentary (n 242) 102.
[316] Art 4 (V) f.
[317] Raquel Rolnik, Ten Years of the City Statute in Brazil: from the Struggle for Urban Reform to the World Cup Cities [2013] 5:1 International Journal of Urban Sustainable Development 54 56.
[318] Teresa Caldeira, 'Democracy and the City : Assessing Urban Policy in Brazil' (Interview by Daniel Nogueira Budny, August 2007, Washington) <https://www.wilsoncenter.org/publication/democracy-and-the-city-assessing-urban-policy-brazil> Retrieved on 25/04/2018.
[319] Commentary (n 242) 96.
[320] ibid.
[321] ibid.
[322] Friant (n 305) 57.

system. But later the approach was shifted towards attributing weight to specific needs of inhabitants and transforming informal settlements into regular neighbourhoods with adequate facilities[323].

In addition to ZEIS, the statute provides further provisions enabling squatters to claim title to occupied land in order to ensure their right to housing. First, it reaffirms the constitutional provision of acquiring title through adverse possession known as *usucapio*. Second, when a number of persons live in the same land and if it is not possible to identify land possessed by each possessor, the statute provides for acquiring title through collective adverse possession[324]. The statute stipulates measures to reduce administrative and economic burdens people face in claiming title through *usucapio*; such as ensuring free of charge access to all legal documents and legal assistance for beneficiaries[325]. Third, the Statute introduces the innovative conception of 'surface rights' to land[326]. Until this law was introduced, the principle recognized under Brazilian law was that entities planted or constructed on a particular piece of land is inseparable with land ownership. The notion surface right separates ownership of land from right to use the land surface. This provision aims to benefit squatters occupying public land. It recognizes their right to use the surface; to build houses, transfer the title of houses and also to pass it to their heirs while the ownership of land remains with the public authority. Since public land cannot be prescript through *usucapio*; this measure effectively secures the housing rights of low-income people occupying public land.

5.6 Conclusion

The extensive number of instruments that we examined so far demonstrates how the City Statute has established a broad and rich legal framework to address and tackle imbalances of urban development. These instruments are interrelated and could be used in combined fashion to realize the social function of the city. For instance, tax collected through IPTU or payments made for right to build can be invested in upgrading informal settlements in ZEIS. Public participation in formulating the Master Plan offers people living in informal settlements the opportunity to demand recognition of their neighbourhoods as ZEIS and to apply special measures. If the authorities act in contravention to the provisions of the City Statute, public civil action can be brought in order to secure collective interests of inhabitants[327]. Thus, the Brazilian urban law offers an example for a legally binding model aiming to ensure right to the city for all.

Since the City Statute was enacted in 2001, many researches have been conducted to examine the actual implementation of the law. Having commendable laws in paper does not necessarily guarantee its full

[323] Caldeira (n 318).
[324] City Statute, Article 10.
[325] City Statute, Article 9,14.
[326] City Statute, Article 21, 23.
[327] City Statute, Article 53, 54.

implementation; and despite various obvious achievements, Brazilian cities still remain to be highly inequal spaces. Though the scope of the present thesis does not allow for an in-depth evaluation of the practical outcomes, several remarks on obstacles impeding reform are worth mentioning. It is important to note that right to the city practices in Brazil are strongly intertwined with the political environment that foreshadows reforms. Urban reform gathered momentum in the local level with the Workers Party (PT) assuming control in different municipalities in 1990s. The City Statute and the creation of a Ministry of Cities to guide its implementation are ideas initiated by reform-minded PT administrations[328].

Experience show that the implementation of urban reform is significantly affected when administrations that do not share the vision of reform assume municipality governments. For example, in the case of PB in Porto Alegre, PT left government in 2004 and as mentioned earlier, allocation for participatory budgeting has started declining since then. Further, there has been criticism on how even the PT government in the national level dealt with urban reform in later stages. Erminia Maricato; a prominent intellectual involved in the urban reform movement argues that in the late 2000s the balance of forces in the PT administration shifted; and the influence of the business community over government policies became stronger. Importance was given to the interests of the real estate sector and social needs were undermined[329]. The programme 'My House-My Life' initiated in 2009 to provide social housing for the poor has been criticised as an 'anti-reform' due to its market-oriented character; in which the state largely subsidised the real estate networks to provide housing for the poor[330]. In 2013 there were uprisings against increasing public transport fares. Further, high investments on constructing football stadiums during the FIFA world tournament in 2014 also drew protests from the part of poorer sections; alleging the government for mishandling priorities[331]. In 2016, the political environment further shifted with right wing opposition parties effectively overthrowing the rule of president Dilma Rousseff. Michel Temer who replaced Rousseff reduced Federal funding for social housing projects[332]. Signalling further regression, the successor of Temer; President Jair Bolsorano has now disbanded the Ministry of Cities[333]. Repercussions these changes having on the right to the city practices are yet to be seen.

Another obstacle that has been pointed out is the tension between the progressive provisions of law and the conservative attitude of judges in interpreting the law[334]. For instance, analysing a number of cases

[328] Friendly (n 239) 163.
[329] Erminia Maricato, 'Overcoming Deep Inequality in Brazilian Cities': (Interview Conducted by Brian Mier April 24 2017) <http://www.coha.org/overcoming-deep-inequality-in-brazilian-cities-an-interview-with-erminia-maricato/> Retrieved on 28.04.2019.
[330] Remeiro *et al.* (n 241) 15.
[331] ibid 17-18.
[332] Brian Mier, 'Bolsonaro and the Death of Social Housing' (Brazil Wire Website, February 19, 2019) http://www.brasilwire.com/bolsonaro-and-the-death-of-social-housing/ Rertived on 28.04.2019.
[333] ibid
[334] Maricato (n 329).

decided by the Brazilian Supreme Court, Cunha explains that the judiciary has failed to grasp the nuance of the concept of social function of property as an internal limitation of private property rights[335]. Instead, the court continues to impose the traditional understanding that conceives social function only as an external limitation. In addition, the actual use of instruments in the statute have also created certain unintended results; going against the spirit of the law. For example, public participation processes are sometimes captured by wealthier sections in the society to forward their interests; and the recognition of separate low-income neighbourhoods as special zones has resulted in formalizing and institutionalizing *de facto* spatial segregation[336].

Some of other critical observations researches have made are as follows: One, Municipalities lack resources to implement programmes and rely on funds provided by the Federal government. This is contrary to the rationale of decentralisation underpinning the Constitution and the City Statute[337] Two, Instruments with a more redistributive character; such as progressive taxation and expropriation are rarely implemented. The influence of the real estate industry has made municipalities reluctant in applying these provisions[338]. Three, popular participation sessions in formulating the Master Plan has tend to become a mere formal requirement due to the absence of clear guidelines of conducting the process. Councils for participation are only advisory bodies and do not have actual power of deliberating regarding the city's future[339]. Four, the rights-based approach to urban development enshrined in the City Statute is diluted due to the simultaneous attention certain municipalities give in promoting a market-driven development approach in urban areas. These contrasting ideals are sometimes present in the same Master Plan; while part of the Plan focusing on regularising informal settlements; other parts delimiting urban areas to facilitate private investment[340].

All these criticisms should be considered in assessing the success of the Brazilian urban reform process. The right to the city is a relatively new concept; and it requires extensive research and discussion to develop a viable model for the right to be realized. The Brazilian experience and lessons drawn from the experience are immensely useful for contemporary and future attempts in developing a successful model as such.

[335] Cunha (n 273).
[336] Caldeira (n 295).
[337] Remeiro et al. (n 241) 11.
[338] ibid 14.
[339] ibid.
[340] Rolnik (n 317) 60

Chapter 6: The Transformative Potential of the Right to the City

The right to the city might have been a marginal academic notion when it was first introduced by Lefebvre in 1960s. But as the examples of the World Charter for the Right to the City, the United Nations New Urban Agenda and the Brazilian City Statute demonstrates; the concept is not merely academic anymore; there is an actual possibility of future entrenchment of the conception in practical legal frameworks. In the context that challenges of urbanization have become a central theme in the international fora, this possibility has become more real in our times. What are the implications the recognition of the right to the city could have on human rights and urban governance? How could we assess the transformative potential of the right to the city in the context of third world urbanization?

Before proceeding to this analysis, I wish to briefly recall the main theoretical postulates that we have discussed so far in the thesis. I started from explaining how socio-economic inequalities have become a defining feature in contemporary urbanization in the third world and how the dominant mode of urban governance informed by neo liberal ideology contributes in exacerbating these inequalities. Further, drawing from theoretical literature on human rights and socio-economic inequalities, I concluded that; a) the existing human rights discourse has not sufficiently recognized socio-economic inequalities as a human rights concern; b) in order to develop a human rights response to socio-economic inequalities there is a need for a renewed conception of human rights; c) bringing the importance of socio-economic rights to the forefront of the human rights agenda; and d) providing a broader interpretation to human rights through aligning them with the norm of material equality would contribute in overcoming the limitations of existing human rights practices.

In the remainder of the chapter, I will analyze the concept of the right to the city within the light of these theoretical propositions in order to elaborate its transformative potential; its potential in contributing to formulate a human rights response to the issue of urban inequality. For the purpose of the analysis, recalling the research questions of the thesis, I wish to address following two questions; *first*, what is the contribution the right to the city could make in broadening our current understanding of human rights?; and *second*, how the incorporation of the right to the city into the human rights framework could contribute in transforming existing urban governance practices in developing countries?

6.1 Right to the City and Human Rights

Concerning the first question, I argue as follows; the recognition of the right to the city brings the issue of urban socio-economic inequality into the human rights equation. This enables us to envision a broader vision of human rights that conceives the prevalence of widespread socio- economic inequalities as contrary to human rights norms. The right to the city has the potential of introducing an egalitarian reading into human rights; to articulate human rights in line with the notion of material equality; and enriching contemporary attempts to form a renewed perspective of human rights.

How does the right to the city introduce such egalitarian dimension? I argue that there are several dimensions of the conception that are crucial in this endeavor. These elements are as follows.

a) The normative foundation: identifying urban inequality as unjust

The normative foundation of the right to the city; that aims to create a more egalitarian urban order through ensuring fair distribution of benefits of urban life is a notion that promotes a broader idea of distributive justice. Such conception of distributive justice resonates with the value of material equality. The very idea of the right to the city emerged based on the understanding that the segregated and unequal nature of contemporary urban spaces have to be transformed; and the urban excluded should have the right to access the best attributes offered by urban life. Thus, the purpose of the right to the city is to tackle socio-economic inequalities that prevail in the urban order. This egalitarian aspect the right to the city represents is important, since the existing human rights framework has failed to address the issue of socio-economic inequalities in a sufficient manner. As discussed in the theoretical chapter, the main concern of the human rights framework so far has been on addressing horizontal inequalities rather than vertical inequalities. The right to the city differs from this mainstream framework precisely for the reason that it intends to address vertical inequalities in the urban context.

As mentioned before, most importantly, what the right to the city advocates is not mere material sufficiency; but a notion of radical distributive justice reflecting the value of material equality. In the third chapter, we explored the structural limitation of the existing socio-economic rights framework that adheres to a minimalist interpretation; focusing on establishing a minimum floor of protection for the poor (material sufficiency); rather than advocating a larger egalitarian project (material equality). The strength of the right to the city is, the conception is not only concerned with eradicating poverty; although it is an important objective of the paradigm. It aims to reduce; if not overcome inequality; to assure that virtues of urban life are fairly shared, and no one is left out. The scholars that framed the idea; from Lefebvre to contemporary critiques such as Peter Marcuse and David Harvey are clear on this fact; the urban order that they envisioned is not an order which only offers minimum protection for the poor while enormous inequalities prevail in the urban space. Their concern is transforming the city; affirming the right of the urban excluded to reclaim the city in a manner the city becomes a shared space among equal inhabitants.

This normative foundation of the right to the city is also observable in pragmatic instruments such as the World Charter for the Right to the City, UN New Urban Agenda and the City Statute in Brazil. The wording of these instruments makes it clear that the intent of the drafters of the documents is to advance a notion of an urban space that is more equal in its composition. Let us briefly recall how the aforementioned instruments have defined and framed the right to the city in order to further elaborate this claim.

The World Charter identifies *inter alia* 'concentration of income and power' and 'social and spatial segregation' as problems generated by existing development models implemented in impoverished countries[341]. Both these problems indicate socio-economic inequalities. Further, the Charter defines the right to the city as 'the equitable usufruct of cities within the principles of sustainability, democracy, equity, and social justice[342]'. It further states that '[the right] is the collective right of the inhabitants of cities, in particular of the vulnerable and marginalized groups [..] with the objective to achieve full exercise of the right to free self-determination and an adequate standard of living[343]'.

Reducing inequalities in cities and promoting inclusive urban spaces is one of the main objectives if the New Urban Agenda[344]. The agenda refers to the 2030 UN Sustainable Development Agenda as a source it derives its framework; and thus, the commitment to reduce inequalities should be read along with goal 10 of the 2030 Agenda; which also refers to reducing inequalities within and among countries[345]. Further, the New Urban Agenda defines the right to the city as 'cities for all referring to *equal use and enjoyment* of cities and human settlements, seeking to promote inclusivity and ensure that *all inhabitants* [..] are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster prosperity and quality of life for all[346]'. Ensuring *equal* access and opportunities for all with regard to physical and social infrastructure, basic services, housing, economic and productive resources are among the principles that underpin the New Urban Agenda.

Finally, the Brazilian City Statute refers to the right to the city as 'the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, employment and leisure, for current and future generations'; and 'democratic administration by means of participation by the population and the representative associations of the various sectors of the community [..]'[347]. The statute identifies 'fair distribution of the costs and benefits resulting from the urbanization process' as a guideline principle in defining the social function of the city. Though what is meant by 'fair' distribution of benefits of urbanization is not defined in the statute, when reading the text along with numerous measures that provides for material redistribution which characterizes the statute; and also when reading it in the light of the objective of the urban reform agenda that led to the enactment of the statute, it is evident that the law envisions an urban order with reduced inequalities.

Therefore, in one way, the right to the city reflects a model that combines the notion of material sufficiency with material equality. Numerous measures to ensure socio-economic rights - for example

[341] Charter, preamble.
[342] § 1 (2).
[343] ibid
[344] NUA ¶ 5
[345] see Thesis Chapter 3 25
[346] NUA ¶ 11
[347] § 2 I II

housing rights - establish social protection floors for the most vulnerable. On the other, these measures are intertwined with the overall vision of reducing inequalities in the urban space; a vision promoting the value of material equality. This model is more or less similar to the redistributive models that characterized the age of national welfare to which Samuel Moyn refers to[348].

b) Promoting a holistic vision of human rights

As discussed in the third chapter, one of the reasons the existing human rights framework has failed to attribute importance to socio-economic inequalities is the skewed nature of the mainstream human rights framework that has become dominant in contemporary times. This partial notion; or the 'neo liberal version' of human rights prioritizes civil and political rights; and neglects the importance of socio-economic rights. Recognizing socio-economic rights as central concerns, treating them in equal footing with civil and political rights and ensuring social protection floors are among the recommendations Philip Alston makes in proposing a human rights response to extreme inequality[349].

The right to the city promotes such a holistic vision of human rights; firmly based on the view that human rights in its all forms are indivisible and inseparable. Therefore, it represents a paradigm that advances an integrated understanding of human rights; refusing to attribute primacy to a particular set of rights. For example, the World Charter recognizes the right to city as 'encompassing all the civil, political, economic, social, cultural and environmental rights enshrined in international human rights instruments'[350]. As explained in the fourth chapter, the Charter refers to a series of civil and political rights, socio economic rights and environmental rights as constitutive elements of the right to the city. The importance of this holistic approach is it brings the matter of socio-economic rights that is neglected by the mainstream human rights discourse to the forefront of urban development processes. The Charter aligns the realization of socio-economic rights along with the principle of social justice by recommending measures such as regulation of fees of public services; so that economically disadvantaged can have access to those services. Examples for further such provision are; ensuring housing rights through ensuring protection against involuntary displacement, establishing rent control and consulting social organizations active in housing rights in formulating housing policies[351].

The UN New Urban Agenda also shares the same holistic vision and identifies the right to the city as comprising all the rights enshrined in the UDHR and subsequent international human rights instruments[352]. Further, it identifies the realization of socio-economic rights such as right to housing, adequate standard of living, food security, health, education and so forth as components of the social

[348] see Chapter 3 p 29.
[349] see Chapter 3 p 21.
[350] §1(2).
[351] ibid.
[352] NUA ¶ 12.

function of the city[353]. In addition, the experience of Brazil provides a practical example on how the right to the city provides a framework to promote socio-economic rights in the urban realm. The City Statute particularly focuses on housing rights of the urban poor, stipulating a number of measures; from establishing Special Zones of Social Interest that upgrades informal settlements; to recognizing the *usucapio* rights of squatters in order to enhance housing rights for the economically excluded populations[354]. The City statute is largely silent on realizing other socio-economic rights and it could be identified as a shortcoming of the statute. Nevertheless, the Participatory Budgeting process endorsed by the City Statute offers measures to realize other forms of socio-economic rights for the urban poor through involving them in determining how the city budget on social spending should be organized. Through Participatory budgeting, the urban poor obtains the opportunity to claim funds to improve their socio-economic conditions such as improvement of infrastructure, sanitation, schools, hospitals and so forth.

The recognition of socio-economic rights as central concerns is important in reducing inequalities since, even in its minimalist form, state action towards realizing socio-economic rights entails provisions of channeling resources from wealthier sections in the society to uplift the living conditions of more vulnerable sections[355]. However, in the right to the city paradigm, socio-economic rights are expected to be realized not in isolation; not as isolated attempts to achieve separate rights; but as a part of a unified project that aims to construct a more egalitarian urban order.

c) Identification of the urban excluded both as a subject and an agent

A further radical nuance of the right to the city is recognizing the urban excluded as a right bearer and a subject of the human rights paradigm. Different categories of human rights that aim to overcome different forms of exclusion always encompasses a particular subject. The 'woman' constitutes the subject of the women's rights discourse; ethnic, cultural or religious minorities form the subject of the minority rights discourse; disabled persons form the subject of disability rights discourse and so forth.

The rationale underpinning the right to the city is that there are sections in the contemporary urban setting that are excluded from the virtues of urban life. In Lefebvrean terms, it is from the exclusion created by the totalization of the urban process that the cry and demand for the right to the city emerges. The right represents the cry and demand of the deprived and the discontented[356]. The economic elite, financiers and so forth do not have to worry about a right to the city since they already have the access to the best attributes of urban space. The recognition of right to the city matters to those who are

[353] NUA ¶13 (a).
[354] see the discussion on upgrading informal settlements in Chapter 5.
[355] see the section theoretical conclusions in Chapter 3.
[356] see the discussion on upgrading informal settlements in chapter 5.

currently excluded from the urban settings. In other words, demand for equality comes from those who have been deprived of equality.

Thus, the recognition of the right to the city means acknowledging the need of transforming the unequal character of urban life by empowering those who are socio-economically excluded. This does not mean already included sections are ruled out from the scope of the right; but the notion acquires its meaning particularly in relation to the excluded and the deprived. The World Charter is clear on this aspect when it refers to the right to the city as 'the collective right of the inhabitants of cities, *in particular of the vulnerable and marginalized groups*[357]'. The slogan 'right to the city for all' or references to 'all inhabitants' that appear in instruments such as the World Charter and the New Urban Agenda should be understood within this context; it implies the inclusion of the hitherto excluded social sections as right bearers. Therefore, the right to the city makes the urban excluded a subject of human rights. In a context in which the right to the city is institutionalized, the urban excluded will have the opportunity to challenge the conduct of authorities if such authorities fail to adhere to the principles underpinning the right to the city in administering urban affairs.

For instance, the Brazilian City Statute which provides for public civil action allowing citizens to sue administrative authorities on the ground of administrative impropriety is an example for such scenario. Under this provision, actions of the mayor could be challenged if her conduct contravenes the obligations that are imposed by the social function of the city. For instance, land purchased by the municipality under the right to preemption has to be utilized for social purposes specified in the statute; such as land tenure regularization or construction of social housing; and if the authorities fail to do so such failure could be challenged[358]. Technically, any citizen (even the privileged sections in the city) could initiate such action; but the most likely scenario is action being utilized by activists campaigning to ensure the social function of the city on behalf of the urban excluded; or by organizations representing the urban poor themselves.

The right to the city not only recognizes the urban excluded as a subject of rights; but also identifies it as an agent of transformation. This dimension is reflected in the emphasis on democratization of urban decision making by enhancing popular participation. The notion of participation is central to Lefebvre's theorization of the right to the city which treats participation as the mean that masses appropriate the urban space[359]. The Lefebvrean idea of participation is a radical conception indicating self-governance of the masses. The actual provisions of participation entailed in pragmatic instruments such as the World

[357] § I (2).
[358] See discussion on right to pre-emption in chapter 5.
[359] see 39-41 in chapter 4

Charter or the City Statute may not reflect the same radicalness; but yet these instruments endorse enhanced popular participation in decision making as an integral component of the right to the city.

Popular participation matters, again, for those who are historically excluded from engaging and participating in decision-making. For instance, the Porto Alegre participatory budgeting process that was explained in the previous chapter, in which marginalized sections played a prominent role in attending popular assemblies provides an example for how popular participation could politically empower excluded sections and involve them in decision-making[360]. Self-awareness and empowerment are necessary pre-conditions for any excluded group to overcome its condition of subordination and exclusion. It is only through such empowerment that structures of inequality could be challenged.

d) The focus on economic redistribution

Redistribution of wealth is central to any project pursuing social justice. The defining feature of the age of national welfare is the state intervention in economic relations to redistribute wealth in a manner beneficial to the economically worse-off sections. In that particular epoch, numerous state formations adopted their own ways to realize this goal. Communist states abolished; or severely restricted private ownership; and the surplus accumulated by the state were channeled to provide services that benefits working masses. On the other hand, welfare states in the West mainly promoted measures such as collective labour rights and progressive taxation to capture a portion of the surplus from affluent classes and directed it towards improving the conditions of popular classes. As Philip Alston also mentions, in order to develop a human rights response to socio-economic inequality, questions of resource distribution should be taken into the human rights equation and spending policy of the government and taxation policies should become concerns of the human rights discourse[361].

The notion of redistribution is a constitutive element of the right to the city paradigm. For example, 'guaranteeing conditions for 'social solidarity economic programs and progressive taxation systems that assure just distribution of the resources and funds necessary for implementation of social policies' is one of the fundamental principles the World Charter is premised on[362]. Further, the Charter requires cities to adopt 'urban norms for just distribution of the burdens and benefits generated by the urbanization process'; and also, financial and public expenditure policy instruments to achieve equitable urban development[363]. Such instruments should focus on appropriating the extra ordinary income captured by the real estate sector and redirect the income 'in favor of social programs that guarantee the right to housing and a dignified life for the sectors living in precarious conditions and risk situations[364]'.

[360] see discussion on participatory budgeting in Ch. 5
[361] see Chapter 3 19-22
[362] § II (6)
[363] § II (2.5)
[364] ibid.

The UN Habitat also identifies spatially just resource distribution as a main pillar of the right to the city; while the New Urban Agenda recognizes strengthening 'municipal finance and local fiscal systems in order to create, sustain and share the value generated by sustainable urban development in an inclusive manner' as a founding principle of the paradigm shift of urban governance that the New Urban Agenda envisions[365]. Further, in defining the link between urban policy and social function of the city, the Brazilian City Statute refers to following principles; a) fair distribution of the costs and benefits resulting from the urbanization process; b) adopting economic, taxation and financial policy instruments and public expenditure to suit goals of urban development in order to prioritize investments which generate general well-being; and c) recovery of government investments that have led to appreciation in the value of urban property[366]. For instance, according to the third principle the municipality could recapture the public contribution that is incorporated in surpluses appropriated by private actors. State expenditure on improved infrastructure might lead in increasing property values and such increase would help the real estate sector to generate further profits through increased prices of land. Such profit is inseparable from public investment; the profit became possible only due to the investment the government has made on infrastructure development. Thus, profits made in this manner are not exclusively private; the public could claim a portion of the value since public expenditure has contributed in creating the surplus. Directing the municipality to recover this value and reinvest it on social purposes channels wealth from the haves to the have-nots.

Further, the concept of Special Zones of Social Interest which provides for slum upgrading measures also entails a dimension of redistribution since it requires state funds to be invested in enhancing housing rights of the urban poor. If state revenue is collected through progressive taxation, slum upgrading also represents a redistributive measure since it channels funds captured largely from affluent classes to improve housing conditions of the urban poor.

e) The recognition of the social function of the city

Finally, the notion of affirming the primacy of the social function of the city is a further element that facilitates nurturing a greater distributive justice agenda in the urban context. Inequality and socio-economic segregation in the urban sphere are linked with the role played by property; and as Lefebvre remarks; the prominence of exchange value over use value is the source that perpetuates inequalities[367].The right to the city conception attempts to reverse this equation by subordinating exchange value to the collective interests of the larger population. The World Charter frames this notion without ambiguity when it states that 'in the formulation and implementation of urban policies, the collective social and cultural interest should prevail above individual property rights and speculative

[365] NUA ¶ 15 (c) IV
[366] § Ix, X, XI
[367] see Ch 4 39-41

interests'[368]. As per the Charter, the city should assume the realization of projects and investments to the benefit of the urban community as a whole; and adopt measures to guarantee full advantage of urban soil, private and public properties that are unused or underused in a manner that fulfils the social function of property[369].

The New Urban Agenda endorses the social function of the city and urban land; and identifies the city as a realm that should facilitate the full realization of social and environmental rights of the inhabitants[370]. The UN Habitat views the city as a 'common good' fulfilling its social function; which means ensuring equitable access for all to shelter, goods, services and urban opportunities and prioritizing the collectively defined public interest[371]. This implies that the collective wellbeing of all inhabitants should precede individual interests. In addition to these instruments, in the previous chapter I discussed in length how the Brazilian City Statute is built on the premise of the social function of the city. For the purpose of the current analysis, it is worth to recall that the statute provides measures to subordinate individual property rights to larger social interests; and these measures include provisions such as progressive taxation on unused property, expropriation, right to build measures, right to preemption and so forth.

The bottom-line of the social function conception is that the urban space is not the exclusive entitlement of the rich and the financiers. The urban space is a shared space of all, and the interests of the former should be subordinated to the collective welfare of all. Looking through this lens allows us to see practices such as evicting poor people from their settlements and handing the land over to businesses for commercial purposes as illegitimate practices inconsistent with the social function of the city. Evictions of this nature that I discussed in chapter two stems from the understanding that commercial interests are more important than the use interests of the inhabitants living in slums. The recognition of the city as an entity that primarily serves a social function enables the urban excluded to challenge such measures; and directs the state to regulate private property regimes in a manner consistent with the common good of all inhabitants.

Therefore, altogether, all these elements of the right to the city; a) its normative foundation reflecting the norm of material equality, b) its vision advancing a holistic notion of human rights, c) the recognition of the urban excluded as a subject and agent of rights realization, d) the focus on redistribution and e) the recognition of the social function of the city forms an egalitarian axis that makes the right to the city a conception compatible with a radical distributive justice agenda. As mentioned earlier, the relationship between international human rights law and socio-economic inequality is increasingly becoming a concern of the human rights community in the international institutional level. In addition to the

[368] § II (2.4).
[369] § II (2.1), (2.3).
[370] NUA ¶ 13 (a).
[371] UN Habitat (n 225) 26

proposals Philip Alston has forwarded in his capacity as the UN Special Rapporteur on extreme poverty; the former UNHRC High Commissioner Zeid Raad Al Hussein has also identified socio-economic inequalities as a serious human right concern the humankind is encountering[372]. With this sort of recognition, it could be expected that there would be further attempts in the international level to broaden the scope of human rights in a manner that addresses socio-economic inequalities. In this context, I submit that, as a paradigm that is concerned with socio-economic inequalities in the urban context, the right to the city could immensely contribute to such endeavor radicalizing the scope of human rights. The right to the city framework will enable the human rights community to assess urban inequalities in human rights terms, to take matters related to redistribution and taxation into consideration; and also look for new ways to address the urban divide.

6.2 Right to the City and Urban Governance

On the second question, concerning the contribution of the right to the city to transform existing urban governance practices in developing countries; I argue that the recognition of the right to the city has the potential in countering the neo liberal influence in urban decision-making. Through this encounter, it is potent in providing a framework to envisage a more democratic and an inclusive form of urban governance.

As explained in chapter two, the integration of third world countries to the neo liberal global hegemony has transformed the nature of urban planning and development in these countries. The impact of growth politics that advocates a trickle-down solution to urban problems tends to priorities business interests at the expense of the interests of the urban poor on the one hand; and the demise of the social role of the state; privatization of public services and reduced expenditure on these services further marginalize the urban poor through promoting dispossession. This model of urban governance caters to the privileged; and the voices of the excluded are not sufficiently represented in urban decision-making.

The institutionalization of the right to the city entails the potential in challenging and reversing these dimensions. If the right to the city is developed as a legally binding model; if the state in its all levels is expected to exercise its authority in accordance with the notion of this collective right, such scenario leads to an alternative understanding of urban governance and development. It is this shift the UN New Urban Agenda refers to when it states that the Agenda envisions a 'paradigm shift' in the way the cities are planned, financed, developed, governed and managed[373]. The egalitarian elements of the right to the city that I discussed in the previous section lay foundations for an alternative urban governance model that promotes redistribution in contrast to the neo liberal model.

For instance, the notion of the social function of the city firmly affirms the primacy of social interests and interprets any commercial interest in subordination to the former. In this framework, the

[372] see Zeid Raad Al Hussein *quoted in* MacNaughton (n 7) 1050
[373] ¶ 15 (a)

municipality could not envision providing concessions to the economic elite as the only way forward; social factors and collective wellbeing of all inhabitants should be considered in making any decision. Such paradigm obliges urban authorities to approach issues such as how to deal with informal settlements in a different manner. For example, today, the prioritization of growth politics has led to enforced evictions releasing land for profitable businesses[374]. The rationale of enforced evictions; particularly removing the poor from the metropolis is that the urban poor are occupying commercially valuable land and that impedes economic growth. However, the right to the city paradigm requires authorities to balance the use-based interests of the inhabitants. As the Brazilian urban reform experience demonstrates, in such paradigm, the approach would be one the state facilitates upgrading informal settlements rather than treating persons living in these settlements as illegal elements.

In the neo liberal model, redistribution is viewed as something unworthy; and it is expected that economic growth achieved through the activities of the market would ultimately trickle down to the poor[375]. But the active role the right to the city paradigm requires the state to perform *vis-à-vis* redistribution reiterates the social role of the state. Instead of privatizing public services; or reducing expenditure on public services, the right to the city obliges the state to ensure that socio-economic rights of all inhabitants are effectively fulfilled.

Perhaps, the most crucial innovation the right to the city introduces in terms of governance is the dimension of popular participation. In a context the right is effectively implemented, urban governance ceases to be an entirely elitist enterprise. The problem of urban governance in our times is lack of transparency; the economic elite is closely allied with the political elite and decisions on how the urban space is organized are often made behind closed doors. As the example of privatization of water supplies in Indonesia that explained in the second chapter demonstrates; this alliance between the political and economic elites often leads to corrupt decisions having detrimental effects on weaker and marginalized sections in the society[376].

The Brazilian experience in cities such as Sao Paulo shows how participatory planning could promote a more deliberative form of democracy; in which citizens openly debate about the best way the city should be organized[377]. Instead of leaving an enlightened elite to make decisions on behalf of them, the participatory model allows citizens; especially the urban excluded to actively take part in decision making; contributing in shaping and reshaping the shared space that they live in. This provides a space for civil society organizations, human rights activists and other grassroots formations that represent the interests of marginalized sections to effectively bring in issues that otherwise would be neglected in deciding priorities. Public participation is not a panacea for everything. Even with public participation

[374] see Ch 2 section 2.3.
[375] ibid.
[376] Ch 2 17
[377] Ch 5 60

certain adverse influences such as the influence of vested interests and pressures imposed by economic realities would exist. Yet, measures to promote popular participation is a progressive step forward which could have a positive impact in democratizing decision making. Thus, democratic participation when coupled with the egalitarian rights-based development vision the right to the city promotes entails potential to nurture a more inclusive urban governance process in the context of developing countries.

Conclusion

The origin of all the modern progressive ideals shaping our understanding of the world; democracy, socialism, feminism and so forth are born out from the civilizational strive for greater equality. The widening divide between the rich and the poor in our times has created a new battle ground the struggle for equality has to be fought. In the context that developing countries are rapidly urbanized; millions of people in the third world are increasingly concentrated in a planet of slums characterized by degrading conditions which is a disgrace for all the progressive values of modern civilization; the struggle to realize a more egalitarian urban order has become an important battle this struggle should pick up.

The human rights community could play an influential role in contributing to this endeavor. However, the existing human rights discourse; due to its partial nature that does not adhere to a holistic notion of human rights has failed to conceptualize socio-economic inequalities as a human rights concern in general. The minimalist interpretation given to social rights; as a set of rights that ensures material sufficiency rather than equality has further exacerbated this failure. Making the equality norm a part of the human rights discourse is essential for any attempt that aims to address the issue of socio-economic inequalities from a human rights perspective.

The main argument I present in this thesis is that the notion the right to the city has the potential of contributing for such shift since, in contrast to the mainstream human rights paradigm, the right to the city is built on the premise of material equality promoting a broader distributive justice agenda in the urban realm. Some of its constitutive elements - the normative foundations of the conception adhering to the value of material equality, the promotion of a holistic notion of human rights, the recognition of the urban excluded as a subject of human rights, the recognition of the importance of economic redistribution and the social function of urban spaces - form an egalitarian dimension; and this dimension entails the potential to radicalize the human rights discourse by strengthening and deepening the equality norm in the human rights equation. If the human rights community embraces the right to the city as an established human right; that will enable them to view urban inequalities as a human rights issue. Such broadening of the human rights imagination could provide a framework to organize campaigns, propose policies and recommendations aiming to reduce urban inequalities. The pressure put on states to ensure the right to the city in formulating policies has the potential in pushing towards a more democratic and a balanced form of urban governance.

None of these mean that the only possible response to urban inequalities is a human rights response. Political parties, labour unions and so forth have an equal responsibility of promoting an egalitarian agenda in the urban realm. There is also no guarantee that the human rights community; in its current form would subscribe to the framework proposed by the right to the city. The dominant thinking that favors civil and political rights; and the reluctance to admit the legitimacy of collective rights would

obstruct any attempt that aims to make the right to the city a part of the mainstream human rights framework. This is of course would be a contestation; part of a counter-hegemonic struggle to define the meaning of human rights. However, the silver lining is that the increased attention the inequality issue has gained in the international level today offers a greater space and opportunity to push forward this struggle.

Bibliography

Alston P, Report of the Special Rapporteur on Extreme Poverty and Human Rights to the United Nations Human Rights Council (27 May 2015)

Alston P, Extreme Inequality as the Anti Thesis of Human Rights (Open Global Rights, August 27 2015) <https://www.openglobalrights.org/extreme-inequality-as-the-antithesis-of-human-rights/> (Retrieved on 28.03.2019)

Araujo M, 'Solo Criado: the Brazilian Experience' (Conference Paper presented at International Research Group on Law and Urban Space (IRGLUS)- 9th 'Law and Urban Space' Workshop, 2013)

Argo T, and Laquian A, 'Privatization of Water Utilities and Its Effects on the Urban Poor in Jakarta Raya and Metro Manila' Conference paper presented in : Forum on Urban Infrastructure and public service delivery for the Urban Poor, Regional Focus: Asia, sponsored by the Woodrow Wilson International Centre for Scholars and the International Institute of Urban Affairs, India Habitat Centre, New Delhi, June 2004

Attoh K.A, 'What Kind of Right is the Right to the City?' [2011] 35 (5) Progress in Human Geography 669

Bahn G, 'This is no Longer the City I once Knew: Evictions, the Urban Poor and the Right to the City in Millennial Delhi' [2009] 21 Environment and Urbanization 127\

Barros A.M.F.B, Carvalho CS, Montandon D.T, 'Commentary on the City Statute' in *The City Statute of Brazil: A Commentary* (Sao Paulo: Cities Alliance and Ministry of Cities, 2010)

Benson J.S, 'The Impact of Privatization on Access in Tanzania' [2001] 52(12) Social Science and Medicine 1903

Bhatnagar D, Rathore A, Torres MM, and Kanungo P, 'Empowerment Case Studies: Participatory Budgeting in Brazil' (Washington DC: The World Bank <https://siteresources.worldbank.org/INTEMPOWERMENT/Resources/14657_Partic-Budg-Brazil-web.pdf> retrieved on 27/04/2019)

Breman J and van der Linden M, 'Informalizing the Economy: The Return of the Social Question at a Global Level' [2014] vol 45 issue 5 Development and Change 920

Butler C, *Henri Lefebvre: Spatial Politics, Everyday Life and the Right to the City* (Routledge,2012)

Chueca EG, 'Human rights in the city and the right to the city: Two different Paradigms Confronting Urbanisation' in Oomen B, Davis Martha F, Grigolo M, (eds) *Global Urban Justice: The Rise of Human Rights Cities* (Cambridge: Cambridge University Press, 2016)

Cuppini N, 'The Globalized City as a Locus of the Political: Logistical Urbanization, Genealogical Insights, Contemporary Aporias' in Enright T, and Rossi U, (eds) *The Urban Political: Ambivalent Spaces of Late Neo Liberalism* (Palgrave MacMillan, 2018)

Conklin M, and Davidson D, 'The I.M.F. and Economic and Social Human Rights: A Case Study of Argentina, 1958-1985' [1986] vol 8 no 2 Human Rights Quarterly 227

Cunha A, 'The Social Function of Property in Brazilian Law' [2011] vol 80 issue 3 Fordham Law Review 1171

Caldeira T, and Holston J, ‘Participatory urban planning in Brazil’ [2015] vol 52 (II) Urban Studies 2001

Caldeira T, 'Democracy and the City : Assessing Urban Policy in Brazil' (Interview by Daniel Nogueira Budny, August 2007, Washington) <https://www.wilsoncenter.org/publication/democracy-and-the-city-assessing-urban-policy-brazil> Retrieved on 25/04/2018

Davis M, ‘Planet of Slums’ [2004] 26 New Left Review 72

Davis M, ‘Planet of Slums’ (London New York: Verso, 2006)

Dehm J, 'A Pragmatic Compromise Between the Ideal and the Realistic': Debates over Human Rights, Global Distributive Justice and Minimum Core Obligations in the 1980s’ (Draft Chapter) forthcoming in Christiansen and Steven L.B. Jensen (eds) *Histories of Global Inequality: new Perspectives* (Palgrave Macmillan)

Dehm J, Righting Inequality: Human Right Responses to Economic Inequality in the United Nations (Draft) Forthcoming in Humanity: An International Journal of Human Rights, Humanitarianism and Development for 2019

Domaradzka A, [2018]. 'Urban Social Movements and the Right to the City: An Introduction to the Special Issue on Urban Mobilization', vol 29 issue 4 International Journal of Voluntary and Non-profit Organizations 607

Fernandes E, ‘Constructing the Right to the City in Brazil’ [2007] 16 Soc. & Legal Stud. 201

Fernandes E, ‘Implementing the Urban Reform Agenda in Brazil: Possibilities, Challenges, and Lessons’ [2011] 22:3 299, 303

Foster S.R, and Bonila D, ‘Introduction: The Social Function of Property: A Comparative Law Perspective’ [2011] vol 80:3 Fordham Law Review 101

Friant M.C, 'Deliberating for Sustainability: Lessons from the Porto Alegre Experiment with Participatory Budgeting' [2019] vol 11 no 1 International Journal of Urban Sustainable Development 81

Friendly A, ‘The Right to the City: Theory and Practice in Brazil’ [2013] 14:2 Planning Theory and Practice 158

Groisman F, and Suárez A.L, 'Residential Segregation in Greater Buenos Aires' in Roberts B.R, and Wilson R.H, (eds), *Urban Segregation and Governance in the Americas* (New York: Palgrave Mac Millan, 2009) 41

Harvey D, *Rebel Cities; From the Right to the City to the Urban Revolution* (London, New York: Verso,2012)

Harvey D, ‘The Right to city’ [2008] 53 New Left Review 23

Kofmann E, and Lebas E, (eds), *Henri Lefebvre: Writings on Cities* (Oxford: Blackwell Publishers, 1996)

Laurell A.C, and Arellano O.L, 'Market Commodities and Poor Relief: The World Bank Proposal for Health' [1996] volume 26 International Journal of Health Services 1

MacNaughton G, 'Vertical inequalities: are the SDGs and human rights up to the challenges?' [2017] 21:8 The International Journal of Human Rights 1050

MacNaughton G, and Frey D.F, 'Introduction' in Gillian MacNaughton and Diane F Frey (eds), *Economic and Social Rights in a Neo Liberal World* (Cambridge University Press, 2018)

Marcuse P, 'Whose Right(s) to What City?' in Brenner N, Marcuse P, Mayer M, (eds) *Cities for People not For Profit* (London, New York: Routledge, 2012)

Marcuse P, 'Rights in Cities and the Right to the City?' in Sugranyes A, and Mathivet C, (eds), *Cities for All: Proposals and Experiences towards the Right to the City* (Santiago: Habitat International Coalition, 2010) 89

Maricato E, 'The Statute of the Peripheral City' in *The City Statute in Brazil: A Commentary* (Sao Paulo: Cities Alliance and Ministry of Cities, 2010).

Maricato E, 'Overcoming Deep Inequality in Brazilian Cities': (Interview Conducted by Brian Mier April 24 2017) <http://www.coha.org/overcoming-deep-inequality-in-brazilian-cities-an-interview-with-erminia-maricato/> Retrieved on 28.04.2019.

Marks S, *Four Human Rights Myths* in Kinley D, Sadurski W, and Walton K, (eds) *Human Rights: Old Problems, New Possibilities* (Chelthenham: Edward Elgar Publishing, 2013) 217

Massey D and Denton N, 'The Dimensions of Residential Segregation' [1988] 67 Social Forces 281

Mayer M, 'The Right to the City in Urban Social Movements' in Brenner N, Marcuse P, Mayer M, (eds) *Cities for People not For Profit* (London, New York: Routledge, 2012)

Merrifield A, 'Fifty Years on: The Right to the City' in *The Right to the City: A Verso Report* (London: Verso, 2017)

Mier B, 'Bolsonaro and the Death of Social Housing' (Brazil Wire Website, February 19, 2019) http://www.brasilwire.com/bolsonaro-and-the-death-of-social-housing/ Rertived on 28.04.2019

Moyn S, *Not Enough: Human Rights in an Unequal World* (Cambridge Massachusetts: The Belknap Press of Harvard University Press, 2018)

Moyn S, 'A Powerless Companion: Human Rights in the Age of Neo Liberalism' [2014] 77 Law and Contemporary Problems 147

Moyn S, Human Rights and the Age of Inequality (Global Open Rights: 2015 October 27) https://www.openglobalrights.org/human-rights-and-age-of-inequality/ (retrieved on 28.03.2019)

O'Connell P, 'On Reconciling Irreconcilables: Neo-Liberal Globalisation and Human Rights' [2007] 7 Human Rights Law Review 483

O'Connell P, 'The Death of Socio-Economic Rights' [2011] Modern Law Review 74(4) 532

O'Connell P, 'Human Rights: Contesting the Displacement Thesis' [2018] vol 69 no 1 Northern Ireland Legal Quarterly 19

Ortiz E, 'The Construction Process towards the Right to the City: Progress Made and Challenges Pending' in *Cities for All: Proposals and Experiences towards the Right to the City* (n 142) 117

Portes A, and Hoffman K, 'Latin American Class Structures: Their Composition and Change during the Neoliberal Era' [2003] 38:1 Latin American Research Review

Piper L, 'How Participatory Institutions Deepen Democracy through Broadening Representation' [2014] vol 61 no 2 Theoria 50

Purcell M, 'Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant' [2002] 58 Geo Journal 99

Purcell M, 'Possible Worlds: Henri Lefebvre and the Right to the City' [2013] vol 36 no. 1 Journal of Urban Affairs 141

Ramanathan U, 'Illegality and the Urban Poor'[2006] vol 41Issue 29 Economic and Political Weekly 22

Rolnik R, Ten Years of the City Statute in Brazil: from the Struggle for Urban Reform to the World Cup Cities [2013] 5:1 International Journal of Urban Sustainable Development 54

Romeiro P, Guimarães D.S, Koetz V, 'The Right to the City in Latin America' in *Moving Toward the Implementation of the Right to the City in Latin America and Internationally* (Global Platform for the Right to the City, 2015)

Siroky D.S, and Sigwart H, 'Principle and Prudence: Rousseau on Private Property and Inequality'. [2014] vol. 46, no. 3, 2014, Polity, 381

Smith A, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) (eds) R.H. Campbell and A.S. Skinner (Oxford University Press, 1976) 709 10

Souza C, Participatory Budgeting in Brazilian Cities : Limits and Possibilities in Building Democratic Institutions [2001] vol 13 no 1 Environment and Urbanization, 159

Stiglitz J, *Globalisation and its Discontents* (New York: W.W. Norton, 2002)

Turshen M, *Privatizing Health Services in Africa* (New Jersey: Rutgers University Press, 1999)

United Nations Department of Economic and Social Affairs, *The World's Cities in 2016 – Data Booklet* (United Nations, 2016)

United Nations Human Settlements Programme (UN Habitat), *Urbanization and Development: Emerging Futures; World Cities Report 2016* (UN Habitat, 2016)

United Nations Human Settlements Programme, *Policy Paper I: The Right to the City and Cities for All* (New York: United Nations, 2017)

United Nations Human Settlements Programme, *The Challenge of Slums: Global Report on Human Settlements* (UN Habitat,2003)

Wills J, 'The World Turned Upside Down: Neo-Liberalism, Socioeconomic Rights, and Hegemony', [2014] 27 Leiden Journal of International Law 11

Wills J, and Warwick B, 'Contesting Austerity: The Potential and Pitfalls of Socioeconomic Rights Discourse' [2016] 23:2 Indiana Journal of Global Legal Studies 629