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COURTING CHANGE: THE ROLE OF APEX COURTS AND COURT CASES IN URBAN GOVERNANCE: A DELHI-JOHANNESBURG COMPARISON

Abstract

The courts are recognised as playing an increasingly important role in the realisation and concretisation of socio-economic rights. However, the implications of these activities for notions of voice, engagement and access to decision-makers and those in power, are largely not understood. This study seeks to address key questions around what type of platform for engagement the courts are providing for more marginalised groups beyond sites of redress, as well as to consider the impacts of court cases, decisions and remedies on policy, practice and the everyday life of urban residents. The study utilises a comparative approach between India and South Africa, and examines two seminal court cases - one in Delhi, the Sealings Case, and the other in Johannesburg, the Olivia Road Case. The case studies demonstrate that the litigants' decision to go to court is, in part, closely linked to the failure of representative democracy and is influenced by the coalitions and alliances of urban actors. Furthermore, the case studies look at the court as a site of engagement between citizens, residents and the state in order to see what benefits or dangers exist when engaging in litigation. The case studies further provide some insights into the implications of being denied access to the courts and how alternative modes of power-seeking and voicing issues come to the fore. Lastly, the case studies offer an account of the consequences of litigation and looks at the impact of court cases on policy, policy-making process, practice and the lives of citizens and notes that these are not only highly differentiated but also extremely unpredictable. In making sense of the role of the court in urban governance, the study argues for a conceptualisation of courts as institutions of hegemony, and pushes Gramsci's notion to explain courts and court cases as platforms on which litigants can promote their own hegemonic or counter-hegemonic project. However, courts are not neutral containers in which these politics unfold; rather they are engaged actors with their own agendas and hegemonic visions, which they seek to enforce through the decisions that they make and the roles that they carve out for themselves within the urban governance terrain.