

SOCIO-SPATIAL CONSEQUENCES OF DISTURBED AREAS ACT 1991 ON URBANIZING SPACES IN GUJARAT

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Segregation on ethnic lines has often manifested in various forms of exclusion and group inequality. The spatial manifestations of violence in globalizing spaces of ‘divided cities’ also exhibit rigid patterns of community based ‘self-sorting’. The communalization of public and private housing with regard to demography has been a significantly pronounced exclusionary crisis in Indian divided cities. This paper, an abridged version of my MPhil thesis, concerns such a unique case. It assesses the impact of Disturbed Areas Act 1991 (‘The Act’) on ghettoisation in Ahmedabad city against the background of mass violence.

The paper thus concerns the dynamics of spatial segregation in cities of Gujarat around residential and commercial property disputes. It conducts a socio-legal examination of ten case laws (2002–2021) by responding to the literature on divided cities. It argues that informal zoning practices of community led self-sorting behavior at the ground level, coupled with the Act’s operation (and the demand for its extension as legal protection), disparately impact existing group inequalities pertaining to housing access, affordability and individual residential mobility in urbanizing spaces.

Keywords – *Disturbed AREAS Act 1991, spatial segregation, inequality, community self-sorting, property.*

| | | | |
|---|-----|---|-----|
| Introduction | 177 | Methodology: Spatiality at the interface of | |
| The Case of Disturbed Areas in Gujarat .. | 179 | Law and Policy | 180 |

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|--|---|
| The Act's Operation, Cases and the | Divided City and Fragile |
| Context of Divided City 183 | Neighborhoods 192 |
| The Act and public housing 183 | Revisiting spatial segregation |
| Residential Property Disputes and the | and 'ghetto' beyond territorial |
| Act 185 | demarcations 194 |
| Commercial Property Disputes and | Locating Socio-Spatial Consequences 197 |
| the Act 190 | Upward mobility and the 'ghetto effect' . 197 |
| Self-Sorting Neighborhoods and Ghetto in | Property value and fairness 198 |
| the Divided City 192 | Conclusion 199 |

I. INTRODUCTION

Ethnic segregation often indicates a violent history of conflict and distrust between communities. It acquires a visible character through residential housing patterns which exhibit a general exclusionary and hostile environment towards ethnic minority groups. In Indian urbanizing and communally sensitive spaces, one of the significant policy challenges then is to prevent outmigration of minority identities from their respective areas in times of heightened ethnic tension (forced eviction).² It is also to prevent further descent of spatially segregated areas into ghettos.³

Newer trends in exclusionary housing, where dominant communities seek to consolidate community sentiment over individual residential mobility, have been recurrent in Indian cities. While geographical segregation based on caste has been an age-old but persistent feature of India's city population since pre-British times,⁴ collective forms of protest by dominant communities to keep out certain specific ethnic communities have emerged as a visible contemporary housing problem in recent times. For example, in Moradabad city, conflict over the sale of two immovable properties to Muslims in a predominantly Hindu neighbourhood came to light. This further led to every Hindu household putting up a poster which read "*Samuhik palayan. Yeh makaan bikau hai. Sampark karen* (Collective exit. This property is for sale. Please

² One of the recent instances is that of post-riot (Northeast) Delhi where many Muslim families have been forced to move, selling their property at lower prices (identified as "forced evictions") and the post-riot period significantly depreciating property values in the area. Flavia Lopes, 'A Year after Delhi Riots, Muslim Families are Selling Homes and Moving Out' (*The Wire*, 7 April 2021) <<https://thewire.in/communalism/a-year-after-delhi-riots-muslim-families-are-selling-homes-and-moving-out>> accessed 4 November 2022.

³ The paper follows Laliwala et al, (2021) who build upon Loïc Wacquant's definition of a 'ghetto' as 'a bounded, ethnically [or religiously] uniform socio-spatial formation born of the forcible relegation of a negatively typed population'. See Sharik Laliwala, Christophe Jaffrelot, Payal Thakkar and Abida Desai, *Paradoxes of Ghettoisation: Juhapura 'in' Ahmedabad*, [Research Report] (2021) India Exclusion Report 2019–2020 104, <<https://hal-sciencespo.archives-ouvertes.fr/hal-03385497/document>> accessed 4 November 2022.

⁴ Naveen Bharathi, Deepak Malghan and Andaleeb Rahman, 'Isolated by Caste: Neighbourhood-Scale Residential Segregation in Indian Metros' (2018) Indian Institute of Management Bangalore, <<https://www.iimb.ac.in/sites/default/files/2018-06/WP%20No.%20572.pdf>> accessed 4 November 2022.

contact).⁵ This collective form of protest implied that all neighbourhood residents were advertising their property collectively for sale in protest against the Muslim owners' entry to their vicinity. One of the residents mentioned a "mutual understanding" which implies self-segregation by the two communities and suggested that their mixing is not welcomed, demanding that the sale be reversed. In addition, the residents demanded that any such property transaction be held with "their consent". Most strikingly, after a probe by the District Magistrate and Police, the authorities concluded that "no one can stop anyone from selling their property to any individual" while "iterating the freedom of people to live anywhere".⁶ Similar instances have been reported in Agra,⁷ Meerut,⁸ and Mumbai⁹ among many other Indian cities.

Many of these instances closely mirror contemporary processes of exclusion and spatial segregation in different cities of Gujarat. In contrast to the authorities' response in Uttar Pradesh, the iteration of consent, freedom to sell property and to reside in any part of the country, may not be a ready and obvious response from authorities in the cities of Gujarat where the Disturbed Areas Act, 1991¹⁰ operates. The emerging nature of community-led sorting in the examples described above warrants acknowledgment of the sensitivity that exists in everyday life to prevent religious disturbances between communities. Simultaneously, it also calls for the development of a regulatory focus to protect individual residential choices, which the constitutionally granted funda-

⁵ Sukrita Baruah, 'Two Houses in Moradabad Locality Sold to Muslims, Residents Threaten Exodus' (*The Indian Express*, 5 August 2021) <<https://indianexpress.com/article/india/two-houses-in-moradabad-locality-sold-to-muslims-residents-threaten-exodus-7438901/#:~:text=Residents%20of%20a%20middle%2Dclass,issue%20at%20the%20heart%20of>> accessed 4 November 2022.

⁶ *ibid.*

⁷ This is where "this house is for sale" posters have come up in ethnically (mixed) sensitive areas where Hindu families residing in the area have wanted to sell their property and move to "safer localities" as they feel panic when instances of tensions suddenly flare up; See Anuja Jaiswal, 'Hindus Offer to Sell Houses in Muslim-Dominated Areas' (*Times of India*, 1 March 2020) <<https://timesofindia.indiatimes.com/city/agra/hindus-offer-to-sell-houses-in-muslim-dominated-areas/articleshow/74420293.cms>> accessed 4 November 2022.

⁸ It relates to a Muslim buying property in the *Chahashor mohalla* neighbourhood and the subsequent protest by right wing groups calling such an inter-faith transaction between two consenting individuals as "land jihad"; Abhishek Dey, 'How can we Share our Neighbourhood with a Muslim?: In Meerut, there's Now Fear of 'Land Jihad'' (*Scroll.in*, 21 December 2017) <<https://scroll.in/article/862216/how-can-we-share-our-neighbourhood-with-a-muslim-in-meerut-now-theres-talk-of-land-jihad>> accessed 4 November 2022.

⁹ It relates to members of a society objecting to an interfaith immovable property transaction "refusing to issue a No Objection Certificate to a Muslim man" on grounds of stereotypical ascriptions such as non-vegetarianism; Parth MN, 'Diluting Real Estate Bill will Further Marginalise Muslims, Women' (*The Quint*, 21 December 2016) <<https://www.thequint.com/voices/opinion/real-estate-bill-anti-discriminatory-clause-omitted-seclusion-on-gender-race-caste-class-in-mumbai-ncr-rera#read-more>> accessed 4 November 2022.

¹⁰ The law on disturbed areas in different cities of Gujarat prohibits the kinds of inter-faith property transfers (in conduct) which have been cited above in the cities of Agra, Meerut and Moradabad between two parties unless the Collector grants permission for the same. See Najmuddin Meghani, *The Gujarat Disturbed Areas Act and Rules (Along with Recent Notification Related to Various Disturbed Areas of Gujarat State)* (Punahal Law House 2021).

mental rights under Article 14, Article 15, and Article 19(1)(e) envision. This demands an examination into the divided and contested nature of urbanizing city spaces.

II. THE CASE OF DISTURBED AREAS IN GUJARAT

Social segregation and ghetto living has been a persistent problem in the rapidly urbanizing city of Ahmedabad. In the background of past episodes of mass violence in the city, the Act was enacted due to many factors which have contributed to ghettoised living: segregated living, forced eviction induced by bootlegging activities,¹¹ distress sales due to religious disturbances, and the constant need for living in ‘safer’ areas in accordance with their respective religious identities.¹² In contemporary Ahmedabad, ghettoised living in the city indicates the adverse impact of segregated living, particularly on the majority of the low-income Muslim population living in ghettoised areas.¹³ Moreover, informal borders acquire an important role in determining the ascription of ethnic identity to a border property through series of residential landmarks.¹⁴ Ahmedabad has been called the “most religiously segregated city of modern India”.¹⁵ Hence, the problem of ghetto living is further complicated by the operation of the Act, which was enacted to reduce ghettoisation. Although many studies have addressed the common theme of social segregation and a number of factors impacting ghettoised living from different approaches, very little scholarly attention has been given to the impact of the Act on its intent i.e., preventing ghettoisation¹⁶ in different cities of Gujarat.

¹¹ Bootlegging refers to forced eviction of residents belonging to a minority community in a certain area led by influential non-state actors where these residents have been forced to sell properties at lower rates (distress sale). Thus, the Act was initially passed as an ordinance in 1986 to stem bootlegging activities and ‘distress sales’ to prevent the dilution of mixed localities. Howard Spodek, *Ahmedabad: Shock City of Twentieth-Century India* (Orient Blackswan Private Limited 2012) 235–236.

¹² Raheel Dhattiwala, *Keeping the Peace: Spatial Differences in Hindu-Muslim Violence in Gujarat in 2002* (Cambridge University Press 2019) 137; Rubina Jasani, ‘A Potted History of Neighbours and Neighbourhoods in Ahmedabad’ in Edward Simpson and Aparna Kapadia (eds), *The Idea of Gujarat: History, Ethnography and Text* (Orient Blackswan Private Limited 2010) 163–164; and Indrajit Roy, ‘Representation and Development in Urban Peripheries: Reflections on Governance in Ahmedabad Suburbs’ (2006) 41 (14) *Economic and Political Weekly* 4365.

¹³ Tommaso Bobbio, *Urbanization, Citizenship and Conflict in India: Ahmedabad 1900-2000* (Routledge 2015) 131.

¹⁴ In the context of ghetto living in a former industrial area of East Ahmedabad (Bapunagar), Bobbio argues that the road dividing Hindu and Muslim communities now serves as a boundary representing the dynamics of economic and political competition among social groups. This boundary division “is activated mainly at times of increasing tension or violence between the two communities”. It becomes identifiable through a series of landmarks such as streets, housing colonies and walls. It is often used to delimit the boundaries of the area in times of increasing tension or violence (Bobbio (n 13) 131, 138).

¹⁵ Laliwala (n 3) 104.

¹⁶ The research gap this paper addresses is methodological i.e. sociolegal examination of case laws (residential and commercial) and theoretical i.e. reading case laws with divided city literature to examine the Act’s original intent i.e. preventing ghettoisation.

This paper examines the impact of the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 ('the Act') in Gujarat, which requires the Collector's sanction in immovable property transactions between communities in designated 'disturbed areas'.¹⁷ The main question this paper asks is – in the three decades of its operation, how has the Act impacted the problem of ghettoization in the city of Ahmedabad? It does so by examining the intent and 'unanticipated consequences' of the Act through a socio-legal interdisciplinary framework. The central argument of the paper is that informal zoning practices of community led self-sorting behavior at the ground level, coupled with the Act's operation (and the demand for its extension as legal protection), disparately impacts existing group inequalities pertaining to housing access, affordability and individual residential mobility in urbanizing spaces.

III. METHODOLOGY: SPATIALITY AT THE INTERFACE OF LAW AND POLICY

The intent of the socio-legal approach in this paper is to bring together the question of land as a property resource in the major processes of urban transformation in the city, and the judicial interpretations of the same through legal disputes.¹⁸ In this regard, land has been understood as a relational space which is a result of social construction, as "users relate to others in a struggle for impressing meaning on the land".¹⁹ Most importantly, the social construction of meanings of land are constitutive of "multi-party, multi-issue interactions between stakeholders, who assume alternating roles in dynamic social situations" and thus, the purpose of such interactions is to be able to understand the shaping of a social situation.²⁰

Conceptually, the relational understanding of land as social space is crucial to understanding the socio-legal method. 'Social' in socio-legal refers to several scholarly responses and actions by a range of actors and organisations on 'land', including how people relate to the concept of land as property through

¹⁷ A conflict arising in a disturbed area (or formal application regarding a proposed immovable property sale) is first dealt at the level of Collector who is responsible for ensuring the application of the Act. An appeal against the Collector's decision can be made to the Special Secretary (Appeals) Department of Revenue (SSRD), Government of Gujarat. If the aggrieved parties are dissatisfied, they can challenge the authorities' decision in Court.

¹⁸ The effort here is to base the socio-legal epistemology against the background of deep seated neighbourhood ethnic divisions and connect theoretical understanding of simultaneous processes which inform the larger ontology of segregation in the city.

¹⁹ The concept of social space comes from Henri Lefebvre who theorizes space as a social relationship entailing property relationships through which are tied with forces of production which reinforce a certain form on that land. See Benjamin Davy, *Land Policy: Planning and the Spatial Consequences of Property* (Ashgate Publishing Limited 2012) 62.

²⁰ *ibid* 63.

indicators of “wealth, social status, power, socio-cultural identity, land rights and land use”.²¹ It is to further see the interface within which the inter linkages between social factors, legal disputes and policy implications emerge. The socio-legal approach, in this sense, problematizes the interface between law and society and serves as a critique of positive law. Thus, spatiality and social, implying the “socially produced space” and socially produced practices, assumes significance in understanding how a policy gets shaped through its spatial dimensions, especially through interpretation by different State institutions.²² Theoretically, it is important to foreground intent and consequences to read social and spatial (socio-spatial) consequences of the Act.

From a sociological perspective, one needs to assess not only the extent to which the objectives of a piece of legislation have been achieved, but also its “non-intended” consequences— what Indra Deva terms as “possible dysfunctions”,²³ including the “latent functions” resulting from them.²⁴ It then becomes imperative to foreground the conceptual underpinnings of the intended and unanticipated outcomes of a certain policy aimed at public welfare. For sociologist Robert Merton, two factors are important in his formulation of consequences – causal imputation implying the problem of ascertaining the extent to which “consequences” may justifiably be attributed to certain actions, and of ascertaining the actual purposes of a given action. He emphasizes that the consequences of an intended action then are not restricted to the specific area which they were initially intended to be applied to, but also occur in the inter-related fields which was “explicitly ignored at the time of action”.²⁵ With regard to disputes pertaining to the Act in this paper, the purpose is to read Merton’s emphasis on interrelated fields and Deva’s emphasis on possible dysfunctions and latent functions resulting from the operation of the Act. The paper examines the social context of segregation and ghettoisation alongside various incidents and judgements to understand the development of the Act through the Court’s interpretation.

The relational understanding, meanings of land, and socially produced space are significant in understanding the occurrence of disputes in disturbed areas. The judgements discussed in this paper highlight the social context of a divided city where disputes in disturbed areas occur and brings to the fore the neighborhood as a microsite of spatial contestation. These disputes bring out multiple social meanings of community residence norms (self-sorting) which dictate residential patterns in neighborhood. The paper engages with twelve

²¹ Varsha Bhagat-Ganguly, ‘Introduction’, in Varsha Bhagat-Ganguly (ed), *The Land Question in Neoliberal India: Socio-Legal and Judicial Interpretations* (Routledge 2021) 1–2.

²² Davy (n 19) 62.

²³ Indra Deva, ‘Introduction’, in Indra Deva (ed), *Sociology of Law* (Oxford University Press 2005) 9.

²⁴ *ibid* 227.

²⁵ See Robert Merton, ‘The Unanticipated Consequences of Purposive Social Action’ (1936) 1(6) *American Sociological Review* 897, 903.

cases (2002-2021) under the Act relating to residential and commercial property disputes.²⁶ To understand the operation of the Act in the socio-legal framework, the social context of spatial segregation has been read with the particular nature of dispute in a given case. Cases which involve multistorey apartments, flats or individual housing have been categorised under residential property disputes, whereas disputes involving mortgaged properties with banks, construction on property for commercial purposes, market value and the property's location have been categorised under commercial property disputes.

As the paper elaborates, it is the socio-political context of spatial segregation which impacts the legal exemption of the Act on rehabilitation schemes and prevents prospects of social mixing between communities. Social mixing severs existing deep-seated social inequalities and ghettoisation in the divided city. The argument is presented through four main ideas – housing as a major site of spatial contestation in the urbanizing divided city (and in cases), informal zoning as an exclusionary community tactic in the divided city, rooting spatiality at the interface of law and policy and thinking 'ghetto' beyond territorial demarcations.

The structure of this paper is as follows: Section I discusses the socio-political context in which disputes pertaining to public and private housing in disturbed areas occur, where the Act either directly operates or is demanded as a legal measure by the dominant communities to prevent certain minorities from availing government schemes. Crucial features of disputes like protests and mass mobilisation at the neighborhood level are theorized in Section II, which revisits the fragility of the demographic ethnic composition of these neighborhoods in divided city literature and self-sorting behaviors of dominant communities. In the background of divided settings and simultaneous inflow of capital and urbanisation in the city, Section II further discusses the theoretical underpinnings of spatial segregation beyond spatial dimensions of ghetto demarcations. This lays down the framework to locate the socio-spatial consequences emerging from the disputes which form the legal disputes under the Act in Section III, followed by the socio-spatial consequences which indicate the socio-political considerations of community self-sorting (informal zoning) and the neighbourhood as a micro site of spatial contestation which intensifies spatial segregation in the city.

²⁶ In listing the twelve case laws from legal search engines, I have not been able to access disputes from 1991-2001. It is a limitation of this study. The study examines a range of legal disputes pertaining to the Disturbed Areas Act 1991 from 2002-2021. It is through the digital availability of the disputes on legal search engines that the list has been drawn. In this sense, the list is not exhaustive and the sample is not truly representative.

IV. THE ACT'S OPERATION, CASES AND THE CONTEXT OF DIVIDED CITY

A. The Act and public housing

This section looks at the operation of the Act through instances of public housing in the social context of a divided city. The Act was enacted by the state government to prevent ghettoisation in Ahmedabad.²⁷ However, in recent years, as an unforeseen consequence, several instances have been reported in which residents of an area have demanded collectively that their area be designated as a “disturbed area”. The purpose of this demand has been to prevent any potential change in demographic composition in the neighbourhood. The *de facto* modes of segregation are also reflected in collective forms of protest which seek a legal backing to resist relocation matters pertaining to public housing or rehabilitation schemes. The schemes are aimed at relocating or rehabilitating the displaced inhabitants of informal settlements. This collective public perception is rooted in two particular sections of the Act – ‘prohibition on inter-community property transfer unless sanctioned by the Collector’ (as mentioned in Section 5 of the Act)²⁸ and the “demography clause” in the Amendment Act 2019.

The 2019 Amendment to the Act, stayed at present by the Gujarat High Court,²⁹ introduces “demographic equilibrium”, “proper clustering” of communities as key determinants for the Collector to decide “if the sale of the property will lead to a likelihood of polarisation or an improper clustering of people” in designated disturbed areas. It is in addition to the previous determinants of past instances of rioting when the public order was in disarray. Section 3(ii) in particular, elaborates on the amended Act’s criteria for declaring a disturbed area where the Government is of the opinion that “polarisation of persons belonging to one community has taken place or is likely to take place disturbing the demographic equilibrium of the persons of different communities residing in that area or that improper clustering of persons of one community has taken place or is likely to take place where the mutual and peaceful coherence amongst different communities may go haywire in that area”.³⁰

For instance, the Bhayli area in Vadodara was included in the limits of Vadodara Municipal Corporation which also happened to be the potential site

²⁷ See footnote 12.

²⁸ The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991.

²⁹ ‘Disturbed Areas Act: Gujarat HC Stays Fresh Notifications on Amended Sections’ (*The Indian Express*, 20 January 2021) <<https://indianexpress.com/article/cities/ahmedabad/disturbed-areas-act-gujarat-hc-stays-fresh-notifications-on-amended-sections-7154739/>> accessed 4 November 2022.

³⁰ Meghani (n 10) 10.

of beneficiaries of *Mukhyamantri Awas Yojana* housing scheme [affordable housing] by the Vadodara Urban Development Authority.³¹ This decision of the urban development authority was met by women-led protests which strongly opposed the municipal body's decision of submitting a memorandum to the Collector. They argued that such a decision would threaten the law-and-order situation in the area, adding that they would boycott the civic body polls unanimously. The bone of contention happened to be the relocation of minorities (also urban poor) to this area from the Tandalja area.³² These residents led by women had demanded that their area be included under the purview of the Act insisting that theirs was a "peace-loving Hindu neighbourhood".³³

In a different instance, a Hindu house owner had to cancel sale prospects to a Muslim buyer because of resistance from fellow society members. Two contentions raised by the residents deserve close attention – that the 'minority' buyer will buy a property at a higher price and then resell it to fellow coreligionists at a much lower price – which will eventually depreciate adjacent property rates in the market, followed by outmigration of Hindu residents from such area.³⁴ A similar instance of resistance can be seen in the extension of the Act to parts of Rajkot (including posh areas), in which the Chief Minister cited instances of "rioting" and "mob violence" while extending the Act.³⁵ The government's decision was followed by the Collector's report who had acted on applications from the residents of the respective societies demanding the imposition of the Act because of increase in inter-faith transactions.³⁶

³¹ This demand was about the cancellation of allotment of homes to the displaced minority community residents of slums in Vadodara under the scheme, which as per the allegation of the protestors would alter the 'law and order situation'. The implicit assumption here is that by extension of the Act to their area, each future property transaction would require the collector's sanction (Section 5 of the Act) and would prohibit inter-community property transfers; See 'Gujarat: Residents demand Bhayli under Disturbed Areas Act, threaten to boycott polls' (*The Indian Express*, 13 February 2021) <<https://indianexpress.com/article/india/gujarat-residents-demand-bhayli-under-disturbed-areas-act-threaten-to-boycott-polls-7186336/>> accessed 4 November 2022.

³² It needs to be noted that according to s 6-A(1) of the Amended Act 2019, Section 4 (Collector's declaration of certain transfers to be void) and s 5 (ii- free consent, iii- fair value, iv- likelihood of polarisation and v- likelihood of improper clustering of persons) of the Amended Act exempt transfers of immovable properties by the persons residing in rehabilitation schemes of the State Government in the disturbed areas. Also, s 6-A(2) states that none of the provisions under s 5 will be applicable where the State Government relocates the persons in any of its rehabilitation schemes in the disturbed area; See Meghani (n 10) 56.

³³ *ibid.*

³⁴ 'Vadodara: House Owner Cancels Sale to Muslim Buyer after Society Residents Protest' (*Scroll*, 25 November 2019) <<https://scroll.in/latest/944821/vadodara-house-owner-cancels-sale-to-muslim-buyer-after-society-residents1-protest>> accessed 4 November 2022.

³⁵ 'First Time in Rajkot: 28 Societies in CM Vijay Rupani's Constituency Brought under Disturbed Areas Act' (*The Indian Express*, 15 January 2021) <<https://indianexpress.com/article/india/first-time-in-rajkot-28-societies-in-cm-vijay-rupanis-constituency-brought-under-disturbed-areas-act-7147967/>> accessed 4 November 2022.

³⁶ *ibid.*

In Vadodara city, the beneficiaries of the slum rehabilitation scheme under the draw allotment of the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) happened to be Muslims. The stubborn opposition of neighbouring housing societies inhabited mostly by Hindus led to allegations of Muslims being unhygienic, creating religious disturbances and so on. Due to pressure from intense mobilisation of non-state actors and local politicians, the Muslims were offered a different relocation site in Tandalja (described as a Muslim ghetto).³⁷ Adding to this, in Khambhat (Anand district), instances of religious disturbances between communities have been interpreted by the government as due to ‘changes in local demography’ leading to the imposition of the Act.³⁸

In the examples above, the relocation from a ghetto area to the neighbouring vicinity of the dominant community has been opposed whereas the relocation of displaced urban poor has been offered the same ghetto area under a government scheme due to public pressure. These examples direct our attention to the additional role of such external pressurizing demands in the government’s move to amend the Act in 2010 and 2019, and its subsequent extension in many districts of Gujarat. Similarly, it can be seen how public housing schemes, which rely on random selection of eligible residents, exhibit patterns of caste, religious or race-based segregation. Further, the relocation of public housing impacts the mobility prospects (meaning the freedom to relocate within the city) of residents coming from distressed neighbourhoods. It is so, since the private housing market and the manifest of capital in urban spaces reflects such discriminatory patterns in the form of gated communities or cluster-based community associations.

From these instances, it needs to be examined if the relocation of such public housing schemes, which are often located in a city’s peripheral areas, are encouraged by the demand for the Act’s imposition. From the above examples, the dominant community sentiment and modes of self-sorting appear to be at the forefront in pressurizing authorities while significantly impacting upward mobility prospects of urban poor. The reproduction of social divisions through instances of self-sorting behavior brings back the divided nature of the residential areas of the city.

B. Residential Property Disputes and the Act

To understand the institutional development of the Act through the Courts and locate its consequences, it is equally important to look at the circumstances under which private property disputes occur, nature of actors involved

³⁷ Lancy Lobo, ‘What Vadodara’s Slum Displacement Reveals: Case of Kalyannagar and Kamatipura’ (2015), 50 *Economic and Political Weekly* 36.

³⁸ ‘Riots: Guj to Impose Disturbed Areas Act in Parts of Khambhat’ (*Business Standard*, 25 February 2020) <https://www.business-standard.com/article/pti-stories/riots-guj-to-impose-disturbed-areas-act-in-parts-of-khambhat-120022501080_1.html> accessed 4 November 2022.

and the different levels of government officials involved in it. It is for this reason that this paper looks at case laws as a significant dataset to examine the intent and unanticipated consequences of the Act. The nature of disputes under residential property case laws revolves around private properties. These are flats in multistorey apartments owned by builders or individuals and single private houses located in cooperative housing societies.

The dispute of *Bankimbhai Jayantilal Shah v State of Gujarat*³⁹ shows how external considerations of future community tension in the procedural inquiries under the Act encourage acts of segregation by authorities. This dispute pertains to a joint family property situated in Kalupur (East Ahmedabad) in which the two parties, owing to the provisions of the Act, had sought permission for transfer of property from the concerned authority, which was then duly granted.⁴⁰ The dispute arose when the permission was cancelled and the sale deed was declared null and void after a month.⁴¹ The reason cited for such cancellation was that the property's location happened to be in a sensitive area like Kalupur and such a property transaction could result in "communal tension".⁴² It was to avoid such an "adverse effect" that the previously granted permission was cancelled.⁴³ In this case, Justice Mehta had quashed the cancellation of previously granted permission declaring such an action "without jurisdiction" and "illegal and void".⁴⁴

The case of *Nasim Banu Mehbub Bhai Kureshi v Shri Chandrakamal Coop. Housing Society Ltd.*⁴⁵ draws attention to religious identity becoming the sole criteria for cancellation of a sale deed, where an act of doing so could be an act of gaining upward mobility. In this case, the disputed property in question, was located in a mixed locality, where persons of various castes and religions resided.⁴⁶ The dispute highlighted in the case is the allegation that Nasim Banu had shown herself as a Hindu and bought property from a Hindu owner. She had then moved to a Cooperative Housing Society without applying for the Collector's permission.⁴⁷ The judge held that the property was indeed situated in a disturbed area and such a transfer of property was in violation of the 1991 Act.⁴⁸ Since the property was based in the disturbed area of Vatva (Eastern Ahmedabad) and the transaction was between a Hindu and Muslim (referred to as the 'minority community'), Justice Shah upheld the cancellation of sale deed

³⁹ 2002 SCC OnLine Guj 126 : (2002) 3 GLH 673.

⁴⁰ *ibid.*, 2.

⁴¹ *ibid.*

⁴² *ibid.*, 3.

⁴³ *Bankimbhai* (n 39) 3.

⁴⁴ *ibid.*, 8.

⁴⁵ 2009 SCC OnLine Guj 9222.

⁴⁶ *ibid.*, 3.

⁴⁷ *ibid.*, 9.

⁴⁸ *ibid.*, 12.

by authorities who had relied on the Government notification, declaring Vatva as disturbed and thus the transaction as null and void.⁴⁹

An interesting aspect of Act's conduct is seen in *Rais v Vijaysinh*.⁵⁰ It pertains to the inconsistent nature of the Disturbed Areas Act under which a sale deed can be challenged by a third party after years. Moreover, the abstract considerations of fair value and free consent do get complicated in the context in such property transfers. In this case, a third party, a family member having interest in the property,⁵¹ had made an application to the Collector in 2010 to cancel a series of sale deeds executed previously between two consenting parties in 2006 in Vejalpur (West Ahmedabad). It was alleged by the third party, that the respective sale deeds were executed without prior permission of the authority as the properties were situated in a disturbed area.⁵² On the base of this application, the Collector had cancelled all the sale deeds.⁵³ It was then contested that such an action was beyond the purview of Collector and such a power to cancel a registered sale deed was only vested in a civil court.⁵⁴ It was also argued that the "impugned order does not state under which provisions of the Disturbed Areas Act it was passed".⁵⁵ It was contended by the defendant that the Collector had acted in a "predetermined mind" and the decision was in haste as the authority had ignored the core aspects of the Act.⁵⁶

The *SNA Infraprojects (P) Ltd. v Sub-Registrar*⁵⁷ case brings the highly contested nature of urban housing as a prime site of contesting ethnic identities, limitations of multiple authorities in resisting segregating practices of informal zoning due to pressure from non-state actors and community mobilization to restrict residential mobility and pressurize residents of Muslim identity. In this case, the petitioner company (owned by a Muslim) had bought multiple flats located in 2010 in the Ellis bridge area of Ahmedabad. They had applied for registration with the Sub-Registrar in the same year. Initially, the concerned authority didn't reply and the documents were pending.⁵⁸ On the insistence of the company, the authority stated, citing the opinion of the Inspector of the area, that the property was situated in a disturbed area and the registration

⁴⁹ In another case, the passing of order by Collector without giving due notice to the stakeholders in a dispute pertaining to property located in disturbed area has been quashed in *Aminbhai Barkatali Panjvani v Collector (C/SCA/6559/2018)*. A similar finding is seen in the dispute pertaining to permission regarding sale of a commercial property in *Ali Enterprises v State of Gujarat*, (2020) 3 GLH 571 in which the Court had revoked the Collector's order where the Collector had permitted property's the sale first time and refused it the second time for resale in a disturbed area.

⁵⁰ 2011 (SCA/10087/2011).

⁵¹ *ibid*, 4 (c).

⁵² *ibid*, 2 (b).

⁵³ *Rais* (n 50).

⁵⁴ *ibid*, 2 (c).

⁵⁵ *ibid*, 2 (e).

⁵⁶ *ibid*.

⁵⁷ 2011 SCC OnLine Guj 2504 : (2011) 3 GLH 15.

⁵⁸ *ibid*, 3.

of their purchased property would happen post granting of permission by the Collector under the provisions of the Act.⁵⁹ The petitioners had contended that the Sub-Registrar had stated in a letter to the Collector, prior to the purchasing date, that the concerned property was not located in a disturbed area.⁶⁰ The Revenue Department had also replied that the State Government had noted a tendency in which due to religious disturbances, the landlords were selling properties to one community out of panic owing to the “fear of losing life and property”.⁶¹

The *SNA* case mentions the plight often applicants who had requested the Speaker of the Gujarat Legislative Assembly to intervene as there were attempts to sell properties to Muslims. Moreover, they refer to a letter drafted by the then Deputy Collector to the Chief Minister in 2006 indicating that such property transfers would force more than a thousand Hindus to leave the area in question.⁶² It is for preventing the defeating of the purpose of the Act that these applicants had argued that such a sale deed by the petitions be held illegal. This case involves a non-state actor “*Shree Kochrab Ellisbridge Hitrakshak Samiti*” which had insisted that the Speaker take note of the transactions happening in the sensitive area.⁶³ However, the petitioners had contended that the applicants suffered a misconception about the Act, and that its primary objective was to prevent entry of persons of a community into another.⁶⁴

In this case, Justice Waghela observed that the applicants’ contention was “suffering from communal prejudice” and they had a “misconception about the law”.⁶⁵ He criticized the state machinery for not imbibing the spirit of the Constitution, indicating the secular nature of the republic, fraternity, and dignity of the individual.⁶⁶ Moreover, in his reading of the Act, Justice Waghela noted the original intent of the Act and stated that it was not to divide “residents or citizens on communal lines”.⁶⁷ He further observed that no law in India could be interpreted in a manner to “exclude the members of one or the other community from carrying on legitimate business activities and entering into communal transactions”.⁶⁸

The case of *Manubhai v State of Gujarat*⁶⁹ brings out another facet of the aftermath of communal violence. This case is about the structural difficulties

⁵⁹ *ibid.*, 3.

⁶⁰ *ibid.*

⁶¹ *ibid.*, 5.

⁶² *ibid.*, 6.

⁶³ *SNA Infraprojects* (n 57), 10.

⁶⁴ *ibid.*, 9.

⁶⁵ *ibid.*, 22.

⁶⁶ *ibid.*, 23.

⁶⁷ *ibid.*

⁶⁸ *ibid.*

⁶⁹ (C/SCA/21312/2016).

and materialisation of violence, due to which many survivors of mass violence cannot return to their former residence. Further this case highlights the government's discretion in deciding the future owners of property. The case directs our attention to a rare aspect of the aftermath of mass violence and possession of property. The premise of this case is that the property had been destroyed during the communal riots and the petitioner wasn't able to live in said property in the post-riot period. In accordance with the provision of the Act (Section 17-D),⁷⁰ the Collector had ordered that the said property be transferred to the government.⁷¹ It is during this time that the petitioner stepped in to claim possession of the property.⁷² He approached the High Court to quash the order passed by the Collector. Justice Pardiwala observed that the Collector's order was "in accordance with the law" which implied that the petitioner could not claim ownership of such a property even as legal heir as per the provisions of the Act.⁷³

The case of *Feroze Falibhai Contractor v State of Gujarat*⁷⁴ brings forth the non-disclosure of religious identity for seeking sanction of sale of immovable property in Samparan Cooperative Housing Society, Vadodara (which comes under purview of the Act) leading to filing of a criminal complaint (First Information Report with charges of "forgery, supplying false information to authorities and for criminal breach of trust").⁷⁵ In this case, a Parsi man, Feroze Falibhai Contractor" was accused of suppressing his Parsi religious identity "in selling his property to a Muslim, Firoz Patel."⁷⁶ The housing society chairperson had alleged that "Contractor took disadvantage of his name Feroze, to paint his identity as a Muslim and escape detailed scrutiny under the Disturbed Areas Act".⁷⁷ The observation of Justice Trivedi (while granting anticipatory bail to the accused) that "prima facie, it appears that no law obliges to state his religion in the affidavit filed in support of application seeking previous sanction to transfer immovable property"⁷⁸ needs to be read in the wider context of spatial segregation and determinants of ghettoisation as elaborated through section on public housing, self-sorting and religious/ethnic identity becoming the prime reason for a dispute under the Act. Primacy of religious identity over individual autonomy in spatially segregated sensitive areas furthers a cognitive deterrence in housing choices one exercises.

⁷⁰ It refers to a post-riot condition that if the landlord fails to erect a new building within a specified period, then the concerned property shall be transferred to the State Government and that the landlord is liable for a compensation. Meghani (n 10) 32.

⁷¹ *Manubhai* (n 69), 3.

⁷² *ibid.*

⁷³ *ibid.*, 7.

⁷⁴ (R/CR.MA/16338/2020 ORDER) LQ/GujHC/2021/2225.

⁷⁵ Saeed Khan, 'Feroze Sells House to Firoz; Matter in Gujarat HC' (*The Times of India*, 21 October 2020) <<https://timesofindia.indiatimes.com/city/ahmedabad/feroze-sells-house-to-firoz-matter-in-gujarat-hc/articleshow/78779417.cms>> accessed 4 November 2022.

⁷⁶ *ibid.*

⁷⁷ *ibid.*

⁷⁸ *Feroze* (n 74) 7.

C. Commercial Property Disputes and the Act

The nature of disputes under this sub-section involves commercial properties in which the Act has been evoked under certain circumstances. These pertain to non-performing assets, bank mortgages, location of a commercial property in a disturbed area and its market value. These cases generate significant theoretical insights around conflicts in which the context of segregation and divided city informs the circumstances and conditions under which the Act is evoked by aggrieved parties.

With regard to commercial property located in a disturbed area, the case of *Network Engitech (P) Ltd. v State Bank of Patiala*⁷⁹ points towards the impact of the extension of the Act on market value. The petitioners had opted for a loan for the purpose of business expansion. Later, they were unable to pay it in due time and their account was thus declared as a “Non-Performing Account”, due to which the bank was liable to seize the property which it had previously accepted as security.⁸⁰ However, the bank refused to accept it as it was located in a disturbed area.⁸¹ It is not clear from the facts of the case as to whether at the time of applying for loan, whether the property was located in a designated disturbed area or not. Moreover, it was submitted by the petitioners that in the given circumstances, their “credit in the business community” had diminished.⁸² This case draws attention to the fluctuation of property value, particularly in banking, which could impact small to medium businesses in mixed or minority areas, impacting business networks and credibility.

An interesting insight about the location of property in disturbed areas is seen in an order passed by the Security and Exchange Board of India (SEBI) in the matter of *Vadodara Stock Exchange Ltd. (VSEL)*.⁸³ It pertains to the location of a commercial property in a disturbed area. The nature of the dispute pertained to the lack of transparency in the conduct of the firm.⁸⁴ Importantly, it was found that the location of said commercial property in a communally sensitive disturbed area had a “negative impact” on finding potential buyers.⁸⁵ Moreover, the lack of adequate facilities like lift, sanitation, water and so on added to the difficulty of getting fair property rates in market.⁸⁶ The SEBI order is reflective of market dynamics in which the value of commercial property value is said to have declined (negative impact). This case is reflective of diminishing business and networking prospects and also speaks to the dominant community’s sentiment of property value reduction.

⁷⁹ 2015 SCC OnLine Guj 5149.

⁸⁰ *Network Engitech* (n 79) 2.

⁸¹ *ibid*, 3.

⁸² *ibid*, 4.

⁸³ 2015 SCC OnLine SEBI 179.

⁸⁴ *ibid*, 1.

⁸⁵ *ibid*, 3(v).

⁸⁶ *ibid*, 3(vi).

A recent landmark case which involves a commercial property transfer by a Hindu to a Muslim trader is *Onali Ezazuddin Dholkawala v State of Gujarat*,⁸⁷ which addresses the gap between the institutional understanding of the Act and the Court's interpretation of segregation. In this case, a mutually consenting and fair value commercial property transfer took place between the two parties which was even supported by neighbours. The location of the property was in a disturbed area where the Muslims were in majority and Hindus in minority.⁸⁸ The Deputy Collector sought opinions of police officers and the Mamlatdar who had answered in the negative.⁸⁹ The Deputy Collector cancelled the sale deed. The petitioner had relied on the Court's previous decisions in *Rasiklal Mehta v State of Gujarat* and the *SNA Infra projects* case (discussed above), in which the Court had reiterated that only aspects of fair value and free consent be considered.⁹⁰ Justice Vaishnav observed that the "paramount consideration" for the concerned authorities is to verify whether the sale in question was a "distress sale" under fear for want of migration from the area, and not to see whether it would create a law-and-order problem.⁹¹ The equation of the law-and-order parameter in this case by the authorities, Justice Vaishnav noted, was "contrary to the provisions of the Act".⁹² The Collector's order was revoked.⁹³

The case of *Raees Ahmed Patel v State of Gujarat*⁹⁴, a habeas corpus petition, presents a complicated picture of the Act's operation in conjugation with the Gujarat Land Grabbing (Prohibition Act) 2020 in which a three-decade old land agreement was challenged under the Disturbed Areas Act. It pertains to the arrest of Ahmedbhai Allahrakhbhai Patel, a senior citizen, under the provisions of Gujarat Land Grabbing (Prohibition Act) 2020.⁹⁵ The allegation of land grabbing pertains to a land agreement between him and two other parties – Lakhubhai Ladhbhai Patel and Rajendra Chunilal Tripathi in the year 1984⁹⁶ in Taluka Vejalpur (Ahmedabad) and further construction of 73 shades occupied by 120 occupants on the property.⁹⁷ The case mentions that after thirty-three years of continuous possession, proceedings under the Disturbed Areas Act 1991 were initiated against Ahmedbhai in 2018⁹⁸ on the allegation of non-transfer of the land, illegal occupation of land and absence of legally admissible documents.⁹⁹ The petitioner had submitted that the Disturbed Areas Act was enacted in 1991 and therefore its provisions wouldn't apply

⁸⁷ C/SCA/13041/2019.

⁸⁸ *ibid.*, 5.

⁸⁹ *ibid.*

⁹⁰ *Onali* (n 87) 8.

⁹¹ *ibid.*, 15.11.

⁹² *ibid.*, 16.

⁹³ *ibid.*, 17.

⁹⁴ R/SCR.A/733/2021.

⁹⁵ *ibid.*, 2.

⁹⁶ *ibid.*, 5.

⁹⁷ *ibid.*, 5.2.

⁹⁸ *ibid.*, 5.3.

⁹⁹ *ibid.*, 5.6.

to registered land transactions before this time period.¹⁰⁰ A Bench comprising Justice of Justice Gokani and Justice Vishen stayed orders of the Deputy Collector and Special Secretary (Appeals) Department of Revenue SSRD observing that these orders were “without jurisdiction and required to be stayed”.¹⁰¹

The examples of protests from the cities of Gujarat come from both, cases of public housing as well as of private housing. At this point, it is pertinent to theorise the nature of contemporary modes of spatial segregation (such as self-sorting behavior against urban poor rehabilitation), which is rooted in social divisions in the city.¹⁰² This demands revisiting scholarly literature which has addressed similar themes of social segregation and deep seated social divisions through competing group claims around land contestation and urban governance in divided city literature.

V. SELF-SORTING NEIGHBORHOODS AND GHETTO IN THE DIVIDED CITY

A. Divided City and Fragile Neighborhoods

The concept of a city, understood as a cosmopolitan site, is where the previous identities are superseded by the cosmopolitan anonymity.¹⁰³ The underlying logic of a newly acquired market identity in the urban setting emerges as a break from the traditional hierarchical social order.¹⁰⁴ In this view, the traditional barriers of social stratification such as ethnic difference is eroded through proximity of living and working.¹⁰⁵ With reference to the contestations over space in conflict cities, the contested city has been understood as a “major urban center in which two or more ethnically-conscious groups – divided by

¹⁰⁰ *ibid*, 5.4.

¹⁰¹ ‘Disturbed Areas Act: HC Stays Proceedings against 72-yr-old Man’ (*The Indian Express*, 8 December 2021) <<https://indianexpress.com/article/cities/ahmedabad/disturbed-areas-act-hc-stays-proceedings-against-72-yr-old-man-7661579/>> accessed 4 November 2022.

¹⁰² One way to understand the socio-political context in which the politics of perception regarding the Act and demography change (as evident with instances of public housing and case laws in Section I) occur is through Ipsita Chatterjee’s ethnographic study in Ahmedabad on the resettlement of “class, caste and ethnic poor”. It shows the reproduction of Hindu and Muslim spaces as residents refused to “resettle” on a random statistical lottery basis which followed a mixed ethnic population. Class and Ethnic poor become significant in setting the socially divided and polarized environment in which the Act operates. See Ipsita Chatterjee, *Displacement, Revolution, and the New Urban Condition: Theories and Case Studies* (Sage Publications 2014) 86–87.

¹⁰³ Dyotana Banerjee and Mona G. Mehta, ‘Caste and Capital in the remaking of Ahmedabad’, (2017) 25 (2) *Contemporary South Asia* 182.

¹⁰⁴ *ibid*.

¹⁰⁵ A.C. Hepburn, *Contested Cities in the Modern West* (Palgrave Macmillan 2004) 1.

religion, language and or/culture and perceived history – coexist in a situation where neither group is willing to concede supremacy to the other.¹⁰⁶

The context of contested cities can be imported to “fragile cities”, which refers to micro-level neighbourhood spaces which are an important dimension of contention within the city. It is to ask – “how is fragility distributed within and between neighbourhoods?”¹⁰⁷ One of the most common focus of efforts of urban governance to mitigate fragility has been to treat symptoms and not structural factors of marginalisation, social disorganization, and inequality which has prioritized “cosmetic upgrades” and “social cleansing”(implying removal of informal settlements) in projects such as ‘Smart City’.¹⁰⁸ As is evident from self-sorting instances of public and private housing in the previous section, involving both residential and commercial properties, spatial contestations over housing and land in particular are examples of everyday conflicts which seek to maintain the status quo of a demographic area, and any proposed change is vehemently opposed by non-state actors.

Ahmedabad city has its own unique context where spatial segregation in residential patterns finds semblance with other cities. However, its persistent problem of religious disturbances at a micro level (alluding to the crucial role of religious and caste identities in everyday life) poses a tussle between the private market push as being the driving force of urban residential development and congested living as a given condition in many areas of the city. For instance, *Manubhai* (seeking to stay in one’s former residence in the aftermath of violence) speaks to the involvement of demography change in the aftermath of violence as the new status quo of demography and residential arrangement. Whereas *Feroze Falibhai Contractor* highlights the deep rooted “rehearsed divisions”¹⁰⁹ and the popular character of everyday communal connotations in which these disputes occur in disturbed areas of Ahmedabad. This is also evident from the discussion on spatial contestations around public and private housing in Section I.

In the ascription of a disturbed area in spatially segregated areas, fragility itself is a crucial feature of a contested city, where neighbourhoods as micro-sites uphold collective forms of segregated clusters of neighbourhoods and

¹⁰⁶ *ibid* 2.

¹⁰⁷ Fragility entails a social category which reflects primary sites of conflict within the city where urban governance arrangements exhibit the spatial manifestations of deteriorating governance. The previous section aptly reflects on the concept. See Robert Muggah, ‘Deconstructing the Fragile City: Exploring Insecurity, Violence and Resilience’ (2014) 26 (2) *Environment & Urbanization* 345, 346, 354.

¹⁰⁸ *ibid*, 347.

¹⁰⁹ By rehearsed divisions, Rubina Jasani implies the ethnic divisions between the two communities which operate in everyday life. Rubina Jasani, ‘A Potted History of Neighbours and Neighbourhoods in Ahmedabad’ in Edward Simpson and Aparna Kapadia (eds), *The Idea of Gujarat: History, Ethnography and Text* (Orient Blackswan Private Limited 2010) 165.

assume central importance in upholding the collective identity. The distribution of fragility in this sense does not rule out the operation of the housing market across spatially contested areas. As seen from case laws (private housing) and from the protests (public housing) in Section I, these disturbances occur in the socially rooted context of community self-sorting across neighborhoods in Ahmedabad. Thus, it is pertinent to foreground the fragility of community relations to further address the complicated question of housing as a “public good” to examine housing outcomes.

As a public good in the divided city of Ahmedabad, housing becomes a prime site of spatial segregation in the fragile city, as it thrives with the likes of the private housing market which caters to the socio-political realities of spatial segregation. This is owed more to the fact that during the 1980s, land speculators gained from the recurring riots. This reflects a causal link between violence and the land market as the makers have been re-organised in terms of their social composition along religious lines.¹¹⁰ A segregated private housing market is a visible character of Ahmedabad, reflected in forms of “clustered based living” which have forms of “gated communities” along communal lines.¹¹¹ It is where the question of governance is confronted with the fragile nature of neighbourhoods and privatizing urban spaces where residential and commercial spaces are increasingly contested in the existing dynamics of spatial segregation in the city. This simultaneous operation of capital and segregation through micro-fragile neighbourhoods questions the highly contested nature of “what constitutes public goods” within a sanctioned framework.¹¹² Such micro-fragile neighbourhoods and group contestations which originate outside conventional understanding of ghetto as bounded territory invite us to reexamine theoretical underpinnings of segregation and ghettoisation in which the Act operates.

B. Revisiting spatial segregation and ‘ghetto’ beyond territorial demarcations

Spatial segregation as a concept carries with it dual meanings and need not always imply negative effects. From a solidarity perspective, segregation implies social cohesion between communities through spatial concentration. It is vital to maintaining the threshold size through which proximity to members of the groups allows language and respective norms of the groups to be

¹¹⁰ See Bobbio (n 13) 77.

¹¹¹ See Devansh Shrivastava, ‘Mobility as a Prohibited Act: Thinking De-Segregation Through Clustered Neighborhoods and Gendered Property Ownership in *Ashant Ahmedabad*’ in A. Srivathsan, Seema Khanwalkar and Kaiwan Mehta (eds), *CEPT Essay Prize 2020* (CEPT University Press 2021) 67, 69.

¹¹² Scott A Bollens, ‘On Narrow Ground: Planning in Ethnically Polarized Cities’(1996) 13(2) *Journal of Architectural and Planning Research* 121.

maintained.¹¹³ In this sense, segregation evokes a self-sorting phenomenon as a community led social regulation in spatial terms by members of an ethnic group. In contrast, segregation implies the “attempts to keep underprivileged ethnic population out of the residential areas of the dominant group” as in the case of Apartheid South Africa where the prohibition was legislated and legally enforced.¹¹⁴

The scholarly debate on conceptualizing spatial segregation then poses the following challenge. Self-segregation in line with one’s ethnic and caste identity has been a predominant mode of making a housing choice. Self-segregation poses interesting questions for the impact of ghetto and residential mobility as the concept of ghetto broadly evokes indirect forced living. The question of how self-segregation impacts the problem of the ghetto and where the Act features in it becomes important when communities choose to self-segregate.

Here, the conceptual links between spatial sorting, indicators of polarisation and modes of residential choice by dominant communities become important. When social groups dictate residential norms and expand geographically in a communally sensitive city, it becomes pertinent to examine spatial sorting as a natural phenomenon and locating the anti-urban poor sentiment (say, beneficiaries of public housing in Section I) in the larger dynamics of polarisation in the city. As an addition to this, the factors of social exclusion and fear of violence which are shaped by collective experiences of “communal disturbances” are crucial in shaping residential preferences.¹¹⁵ From case law, one way to read instances of self-segregation between communities and groups protests, involvement of third parties and community self-sorting attempts at inter-faith property transfers is through a conceptual insight of the “ghetto effect”. It comprises of other sites within a city where the effect of the ghetto is visible in its nearby areas (in terms of pervasive mentality of suspicion and antagonism towards certain groups) where the effects of socio-geographical delimited space of a ghetto also spill beyond its territorial boundaries as a more generalized effect. This effect also structures everyday interactions with residents inhabiting the ghetto (the ‘other’).¹¹⁶ In this sense, housing options for Muslims in mixed settlements are shrinking and ghetto formation is voluntary where people choose to move to areas of their co-religionists which serves not only as a security incentive but also as a way of preserving one’s identity.¹¹⁷

¹¹³ Frederick W Boal, ‘Introduction’, in Frederick W Boal (ed), *Ethnicity and Housing: Accommodating Differences* (Ashgate Publishing Ltd 2000), 3.

¹¹⁴ *ibid* 18.

¹¹⁵ Anasua Chatterjee, ‘Narratives of Exclusion: Space, Insecurity and Identity in a Muslim Neighbourhood’ (2015) 50(52) *Economic and Political Weekly* 92.

¹¹⁶ Radhika Gupta, ‘There Must be Some Way Out of here: Beyond a Spatial Conception of Muslim Ghettoisation in Mumbai?’ (2015) 16(3) *Ethnography* 354, 356.

¹¹⁷ *ibid*.

Reading Gupta's "ghetto effect" with Waquant's emphasis on territorially bounded and forcibly relegated groups "negatively typed population"¹¹⁸ helps us situate ghetto as an effect produced through the disputes. It helps retain the tension between the cognitive dimension which dominates the community self-sorting behaviour and negative ascriptions which prevent specific communities from moving to different areas of the city. This is where the impact of disturbed areas as a regulatory measure to check growth of ghetto-like conditions assumes utmost importance in communally sensitive areas.

The patterns of residence could thus be understood as markers of conscious choices of its residents to either live in clusters or area-wise. Theoretically, social sorting can then either manifest in furthering the geographic inequality or consolidate class-based solidarity structures which severely restricts the mobility of residents. Taking the background of mutual distrust between communities as a result of multiple episodes of mass violence, social sorting itself can be seen as mediated through premediated 'choices' informing the patterns of migration intertwined with particular areas where people of one community move in. This emerges as a contemporary urban and peri-urban exclusionary problem in the rapidly urbanizing city of Ahmedabad with private market-led housing development.

Simultaneously, the city is also an emerging sight of consistent government efforts to project the city as world class in terms of infrastructural development. Efforts to do this has led to more contestation around the collective meanings of places seeking this status.¹¹⁹ For instance, in the context of Delhi, slums and squatter settlements have been "inevitable outcomes" and not the violation of the city's Master Plan. The mismatch between the plan and outcome has been referred to as "unintended cities" in which people outside the ambit of the plan (often termed as "illegal") strive to arrange basic amenities for themselves informally.¹²⁰ To foreground this mismatch in the context of disturbed areas and ghettoisation in Ahmedabad, Nandini Sundar's 'legal geography', which denotes the coming of slums as an "essential accompaniment" to the development plan of Delhi implying the criminalisation of a vast proportion of the city's proletariat class and adding the barrier of legality to their existence is important.¹²¹ Second, "the line between consent and coercion is always blurred by the structural violence that implicitly shapes 'choice'". In this sense, in the absence of legal affordable housing close to one's livelihood options, can such a move at all be voluntary?¹²²

¹¹⁸ See Laliwala (n 3) 104.

¹¹⁹ Amita Baviskar, *Uncivil City: Ecology, Equity and the Commons in Delhi* (Sage Publications 2020) 25–26.

¹²⁰ Jai Singh, 'The Left Front and the 'Unintended City': Is a Civilised Transition Possible?' *Economic and Political Weekly* (1996) (31) (45–46): 2977–2982 cited in Amita Baviskar, *Uncivil City: Ecology, Equity and the Commons in Delhi* (Sage Publications 2020), 18–25.

¹²¹ *ibid.*, 40–41.

¹²² *ibid.*, 52–53.

In the background of scholarly concepts on divided cities and its contested spaces, Sundar's legal geography and choice as a constant negotiation between consent and coercion while underscoring livelihood and safety provides a conceptual direction. It is to ask whether social segregation can cause polarization between communities irrespective of conscious decisions by residents to segregate. The tussle of residential choice between community self-sorting and the "voluntary" move to self-segregate in the context of disturbed areas speaks to the spatial development of the regulatory policy, here, evident in the operation of the Act, and a cognitive misperception.

VI. LOCATING SOCIO-SPATIAL CONSEQUENCES

The demand for the Act's imposition defeats the purpose of the Act when communities demand so, as it leads to a two-fold unintended impact. First, in the face of expanding urbanism and city limits, it reduces the prospects of better upward modes of residential mobility for the urban poor. Second, it raises questions on what constitutes a "fair" market price of land¹²³ in the absence of conflict between communities.

A. Upward mobility and the 'ghetto effect'

While thinking of the urban poor and the question of highly [spatially] contested cities, it becomes imperative to think of how distributive and redistributive policies targeting basic amenities would impact residential choices. A pressing concern with regard to the need for an ethnically sensitive housing policy, which targets parts of urban areas generally neglected by the private market, has been highlighted by scholars arguing for accommodating ethnic differences in housing. In doing so, the often-sought response has been through state intervention.¹²⁴ The question of social sorting, residential arrangements and segregation then, in accordance with specific caste, ethnic, religious or racial identity, has become pressing in urbanizing spaces of Ahmedabad for two primary reasons.

One, self-sorting (informal zoning tactic) by communities also operates through segregated housing markets. It also shapes demand from dominant communities seeking legal means (such as the demand of the Act's imposition in Section I) to negotiate with the state's relocation of the urban poor. In

¹²³ As per the Act, in principle, fair value in a consenting transaction implies the absence of conditions which signify a distress sale. However, as the case laws under commercial property disputes suggest, many external factors too impact the value of a property in market because of the ascription of disturbed area.

¹²⁴ Richard Tomlins, 'Addressing the Housing Needs of Minority Ethnic Communities: Towards a Pluralistic Ethnic Housing Policy', in Frederick W Boal (ed), *Ethnicity and Housing: Accommodating Differences* (Ashgate Publishing Ltd 2000), 163.

addition, it seeks to prohibit prospects of upward residential mobility as evident in the *SNA Infraprojects* case and the *Onali Ezazuddin* case. Two, social sorting as a crucial feature of stratification in residential living in India too needs to be examined against the impact of private market. This could well be thought of as informal factors (say community self-sorting) conditioning the dynamics of market which impacts not only public housing but also private housing.

It is in this sense, informal zoning tactics by dominant communities and the Act's operation is evocative of restricted choices for ethnic minorities, who do not have the freedom to relocate to areas with better services and quality of life, resulting in self-segregation. It is so since the class dominance of different competing groups in the form of spatial contestation in residential and commercial market is a visible feature of many highlighted mixed areas of Ahmedabad. A significant policy issue to be considered here is that of disparate consequences of the Act and its tussle with other policies which advocate inclusivity.¹²⁵

B. Property value and fairness

Property value emerges as a common significant factor from the case laws. It applies to both residential and commercial properties. An important question is – how can a fair market value of commercial property to be mortgaged be assessed when it is compromised by declaration of an area as disturbed, following which a financial institution too devalues it? When imported to the context of infrastructure in ghetto area, the knowledge that a particular commercial property is located in a designated disturbed area lowers its market value. This brings back our focus on one of the main objectives of the Act – ‘fair value’.¹²⁶

The non-grant of permission by the Collector in a proposed sale gives sufficient insight as to how external considerations of population increment of one community and its equation with future communal tension features into

¹²⁵ One such example is the introduction of the anti-discrimination clause in Real Estate (Regulation and Development Act), 2016. The clause prohibits builders from refusing to sell their apartments based on buyer's caste ethnicity, gender, religion, or dietary preferences (See Vithayathil T, Singh G and CK Pradhan, ‘Only ‘Good People’, Please: Residential Segregation in Urbanising India’, in Sujata Patel and Omita Goyal (eds), *India's Contemporary Urban Conundrum* (Oxon 2019) 50). Reading the operation of RERA anti-discrimination clause in disturbed areas of Gujarat demands a thorough empirical investigation to juxtapose the question of property prohibitions and anti-segregation policy move under the RERA amendment.

¹²⁶ In the context of residential property, it finds semblance with Kulshrestha's argument on the “anti-informal settlement sentiment” where residents of neighbouring areas have protested on grounds of property value reduction and lowering of rents. See SK Kulshrestha, *Urban Renewal in India: Theory, Initiatives and Spatial Planning Strategies* (Sage Publications 2018) 12.

the depreciation of property values. Also, while considering such depreciation, prior to and after the allocation of public housing to the urban poor situated in a disturbed area, close attention should be paid to the dynamics of property transfer through public and private housing, the nature of disputes under the Act in these circumstances, and the role of residents in neighbouring areas in dictating self-sorting terms.

The example of Juhapura (ghetto, situated in west Ahmedabad) is telling in this case. Laliwala et al. inform us that banking services have come to the area from 2005 onwards and public banks in particular have come in the recent decade.¹²⁷ If one negotiates the delayed arrival of banking and financing servicing services to Juhapura against the description of depreciation in property values in disturbed areas as seen in the *Vadodara Stock Exchange Ltd (VSEL) and Network Engitech (P) Ltd.* case, then there is a greater need to rethink the intended objectives of the Act as it frustrates the support of state's institutions due to market based fluctuations in property values.

Juhapura's credit and mortgaging system opens up an important avenue to explore on how segregation and the extension of the Act impacts financial situations in such areas.

However, it is not causality or correlation of delayed public services that is being linked to the Act's imposition in the area. Rather, it is the reading together of a larger property devaluation sentiment (the Act as a legal cover by dominant communities to prevent people from preventing from public housing), to that of most basic banking functions such as mortgaging, loans and property valuations which sustain several small and medium businesses in these areas. It is worth importing the facts around ethnic identity, collective mobilisation and the demand for the Act's imposition from the *SNA* case, the *Firozibhai* case and others, to the arguments in Section I on going beyond the spatial dimensions of thinking about ghettos (Radhika Gupta's "ghetto effect"). It is to arrive at the importance of social construction of disturbance and its disproportionate impact on residential choice, property value and fairness. It helps us examine how property value variations (fluctuations) occur in areas which witness such collective forms of protest in which thousands mobilise to prevent one ongoing immovable property transaction between consenting parties.

VII. CONCLUSION

In the context of the divided and globalizing city, this paper contributes to the emerging scholarly literature on spatial segregation and ghetto-like conditions in light of the spatial development of the Disturbed Areas Act, 1991. It

¹²⁷ Kulshrestha (n 126).

has engaged with case laws pertaining to disturbed areas and their institutional interpretation by drawing attention to the spatial implications of the Act. The socio-legal examination has drawn attention to the disproportionate impact of the Act, ranging from its institutional interpretation to informal tactics of zoning by dominant communities, which exacerbate existing inequalities pertaining to housing access, affordability, and individual residential mobility in urbanizing spaces.

The social inequalities of the limited freedom to move in the city, as seen from examples in various cities of Gujarat, is eventually perpetuated in the process, as an “unintended consequence” of the Act, and tends to further ghettoise the minority groups with limited options of residential choice. In arguing so, the operation of the Act echoes the phrase “unintended consequence to an explicit goal”, from Huse’s study on gentrification in Norway.¹²⁸ The blanket application of the Act raises more questions about its intent and conduct through State’s institutions, than it answers about the impact of the policy on ghettoisation. External socio-political considerations which inform practices of spatial segregation impact the operation of the Act, as is evident from public and private housing instances.

It raises several social concerns reinforcing manifestations of spatial segregation and inequality. This is where, in the background of spatially contested and communally demarcated areas, the onus of intervention and change through inclusive policy response comes back to the State. Also, it needs to be noted that a legal challenge to every dispute is not a feasible means for aggrieved parties in a general hostile environment for different religious individuals/communities who wish to move (relocate) to certain areas for gaining upward mobility in extremely limited residential options. A former Chief Minister’s statement, “A Muslim selling property to a Hindu is also not okay” produces long term ramifications when considering the impact of the Act particularly in the recent decade.¹²⁹ Arguably, it can be inferred that such a tussle does severe damage to rehabilitation prospects of Chatterjee’s “ethnic poor”, and definitely caters to dominant communities and segregated markets. The informal zoning tactics and the perception against the demography change clause in the Amended Act, dilute the possibilities of residential mixing by advocating separation between communities. As the cities, and subsequent intra-city migration patterns expand, any emerging community-led self-sorting sentiment should not override public housing schemes targeting the urban poor through the imposition of a law which was primarily enacted to prevent spatial segregation.

¹²⁸ Tone Huse, *Everyday Life in the Gentrifying City: On Displacement, Ethnic Privileging and the Right to Stay Put* (Routledge 2016) 54.

¹²⁹ See Laliwala (n 3) 104.