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## Community exclusions in governance of slum upgradation programs in India: Empowerment through Judicial intervention

*Sub-them 1: Planning Strategy for Sustainability, Empowerment of Communities*

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**Key words:** slum upgradation programs, judicial intervention, community exclusions, empowerment, public interest litigation, India

### 1. Introduction

In the urban governance in India, especially of slum upgradation programs, the government and non-government agencies including community networks are increasingly 'joining up' for improved delivery and accountability. The democratization and decentralization of urban governance is facilitated and mandated through Government of India's (GoI) Seventy fourth constitutional amendment Act ( 74<sup>th</sup> CAA). It is further reinforced in GoI's National Urban Renewal Mission (JNNURM) through reforms and performance linked funding. Under JNNURM's program Basic Services for Urban Poor (BSUP) central assistance from GoI is granted to the Urban Local Bodies (ULB) for the construction of houses for urban poor with performance and reforms conditions focused on community participation, service delivery and accountability.

However, in urban governance in India, especially related to slum upgradation programs, the rhetoric of community participation does not necessarily translate in to practice in reality. In India, conventionally the executive and the legislature play a major role in the *governance* process. However the experience of Indian Judiciary is that, particularly in the context of poverty and community exclusion issues, Supreme Court and High Courts have begun to play a significant role in pro poor urban governance. This is achieved through a tool termed as Public Interest Litigation (PIL) or 'social action litigation', as some call it. PIL, originating in the late 1970s, encourages litigation concerning the interests of the poor and marginalized. To facilitate this Judiciary has loosened rules and traditions related to standing, case filing, adversarial process and judicial remedies (Gauri, 2009). It was partly an effort on the part of the courts to address the issues of poverty, social exclusions and powerlessness of the vulnerable that the legislature and executive tend to overlook.

The objective of this paper is to analyse the rhetoric reality gap in planning strategies for community participation in pro poor governance in Ahmedabad in general and BSUP program in specific. As a consequence of the rhetoric reality gap in planning strategies, the paper analyses the role played by the civil rights organisations and judiciary in reinstating community participation and triggering pro poor community policy adaptations in Ahmedabad. The paper thus seeks to answer the question on how has civil rights activism and judicial intervention empowered slum community in Ahmedabad?

Qualitative methods were used for data collection and analysis. Semi structured interviews of key personnel in each agency were conducted with questions focused on community inclusion, and evolution /adaptation history of the BSUP program in Ahmedabad. The data collected through

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interviews was triangulated with field work observation and documentary evidence in the form of agency reports, evaluation reports, media reports, and academic work dealing with the case study.

## 2. Methods

Qualitative methods were used for data collection and analysis. As the lead author is familiar with slum upgradation programs in the city of Ahmedabad through her work in the city, this enabled easy access to offices, officials, civil society actors and slum community. A command over the vernacular language, local customs and traditions enabled to capture 'situatedness' of the field work which is critical in qualitative research (Walsham, 2006).

Qualitative methods were used for data collection and analysis. At the onset, a detailed baseline process of BSUP program and ongoing slum upgradation programs was mapped with document analysis and informal interviews to understand inter and intra agency information flow and decision making.

Semi-structured interviews of key personnel in each agency and slum community leaders were conducted with questions focused on community participation, cross agency coordination, judicial intervention and evolution/adaptation history. The baseline process helped in identification of these key decision makers at various levels in each agency. In many cases the interviews were repeated to corroborate a new turn of events or triangulate the findings from other interviews or document analysis (Eisenhardt, 1989).

The semi-structured format allowed open and flexible dialogue in which issues unforeseen a priori to the interview also emerged. The interview data was supported by informal discussions during workshops, chance meetings or encounters in the field. Most interviewees had a prior professional relationship with the researcher or were acquainted through mutual contacts. This not only helped in gaining easy access to them but may have evinced more candour and thus enriched the content of the interview. Most interviewees from government bodies and their associates from civil society solicited and were guaranteed confidentiality and anonymity. In qualitative research this is a common practice and it increases the reliability of the data (Walsham, 2006). The interviewees from non-state agencies such as CBOs, NGOs, Civil Rights Organisations (CROs), academia etc. on the other hand answered with apparent candour without claiming anonymity.

Ethnographic field work was carried out in slums with existing or future beneficiaries of the programs, in newly built BSUP localities, in post demolition slum sites where people continued to live, in interim relocation sites, and in random slum communities. Ethnography involves engagement in an extended period of observation in the settings of the object of study (Silverman, 2000). A familiarity with local language and ethos helped the lead author in relating to the community and capturing the 'meaning' and 'situatedness' of words and actions.

The data collected through interviews was triangulated with documentary evidence such as national and state government orders, program guidelines and toolkits, municipal budgets and balance sheets, Quarterly Progress Reports (QPRs), Public Interest Litigations (PILs) in Supreme Court & High Court and subsequent judgments, public media sources, and academic work dealing with the case study.

## 3. Case study & Analysis

### 3.1. *Ahmedabad : Overview of slum deprivations, upgradation programs and community engagement*

Ahmedabad, a historical trading and textile city, has a segmented spatial pattern in terms of income group and environmental quality resulting in the low income group dominated east Ahmedabad on the east of the river Sabarmati and the affluent west Ahmedabad. The earliest low income settlements in the city were the *chawls*, single-room housing units built for the industrial workers in the proximity of the textile mills. Controls on rent imposed by the Rent Control act to safeguard the interest of the poor tenants kept rents extremely low, discouraging maintenance and resulting into further deterioration of the *chawls*. From 1950s onwards the urban growth largely took place in the eastern the western urban peripheries where illegal occupation of marginal areas led to formation of slums by newly arrived migrants. Thus there are two types of urban poor settlements found in the city: *chawls* originally built

near the mill premises for workers and slums that represent illegal occupation of marginal areas of the city and found along riverfront, in low lying areas and on vacant private or government land.

With a population of 3.52 million as per census 2001, Ahmedabad has 0.9 million or 25 percent of its population living in 710 slums. Since the Census 2011 data is not made available yet, the analysis is based on 2001 data.

**Table 1 : Composition of slums and chawls in Ahmedabad Municipal Corporation**

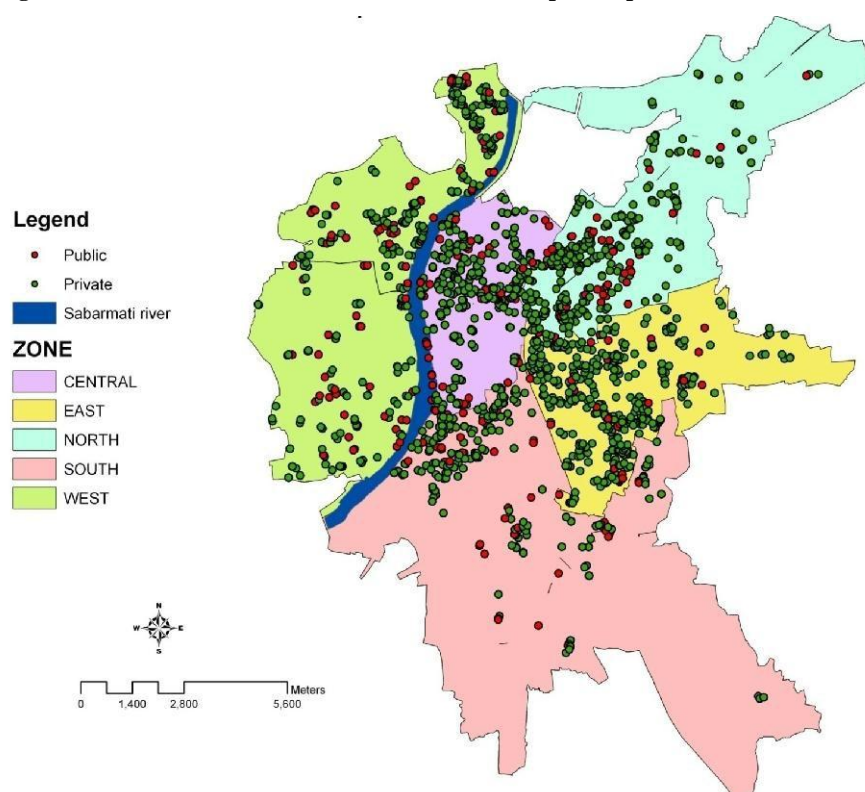
	Pockets (No.s)	Population (in 00000's)
Slum	710	8.8
Chawl	958	7.5
<b>Total</b>	<b>1668</b>	<b>16.3</b>

Year	Area (Sq.Km)	Population (in 00000's)	Annual growth (%)	slum population (in 00000's)	slum population (% of total)
1981	98	20.6	2.7	-	-
1991	190	28.8	2.9	4.6	16
<b>2001</b>	<b>190</b>	<b>35.2</b>	<b>2.0</b>	<b>8.8</b>	<b>25</b>

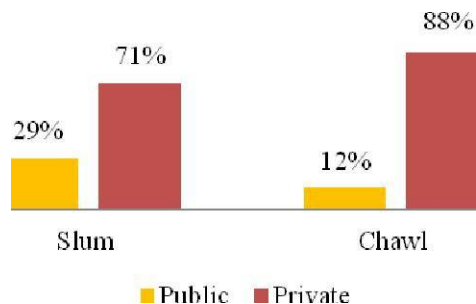
Source: AMC-NGO survey 2001

**Figure 1: Distribution of slums in Ahmedabad Municipal Corporation**



A unique feature about the slums and chawls in Ahmedabad is that unlike other cities of India where slums are largely located on public lands, here 71 percent of slums and 88 percent of chawls are located on private lands. This becomes a critical factor in provision of tenure rights to slum dwellers leading to unwillingness by AMC to grant defacto tenure protection for periods longer than 10 years. Hence most slum households do not have access to secure land tenure.

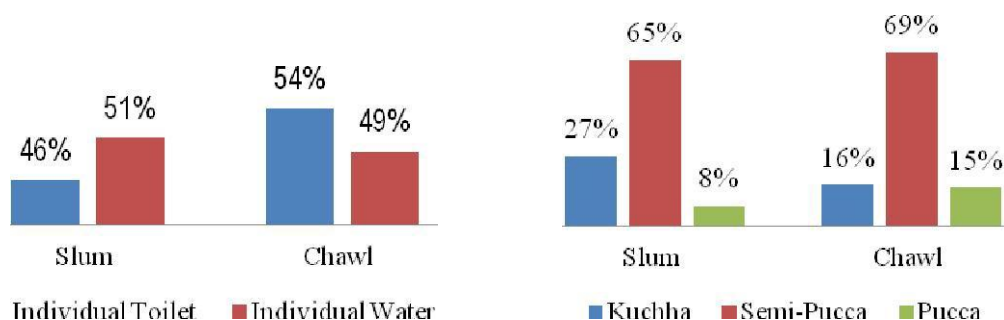
**Figure 2: Distribution of slums and chawls in terms of land ownership**



Source: AMC-NGO survey 2001

In terms of other deprivations, as of 2001 data, 51 percent of slum households have access to individual water connection, 46 percent have access to individual toilets and only 8 percent live in dwelling units which are permanent (structurally durable) in nature. From these statistics, it is evident that though the slums are faring better in terms of access to water and sanitation, overall a major quantum of physical deprivations in slums remain untackled.

**Figure 3: Distribution of slums and chawls in terms of land ownership**



Source: AMC-NGO survey 2001

These deprivations persist despite initiatives by Ahmedabad Municipal Corporation (AMC) since 1950s towards upgrading slums. AMC's stance on pro poor governance can be envisaged in two ideological era partly reflecting the macro level changes in socio-economic-politico cultures. From 1950s till late 1990s AMC functioned as a small welfare state (UNHABITAT, 2003). It deliberately made the life of the slum dwellers easy by not enforcing anti poor regulations and evictions, tolerating slum settlements on public and private lands and allowing use of public land for informal income generating activities. In 1970s with an amendment to Municipal Corporation Act, AMC was obligated to expend 10 percent of its budget on improving basic services and housing conditions for the urban poor in slums and chawls.

During this period, AMC's pro poor initiatives were supported by civil society organisations and philanthropist mercantile families as willing and active partners. The factors associated with evolution of civil society organisations in the city are initiatives by Gandhi for upliftment of the down-trodden, the establishment of the Textile Labour Association and the missionaries' role in education and welfare of the lower castes and poorer sections of the society. The business community's interest in civil life goes back to the early years of the municipal corporation in the 1950s when the Congress Party in alliance with the Textile Labour Association dominated the local scene. Till the floundering of the textile industry, practically all the mayors of the city were mill owners deeply interested in the quality of life of the city (Dutta, 2000). This changed with changes in political alliances and textile industry collapse leading to loss of interest of mercantile aristocracy in the civic life. However, since late 1990s or early 2000s a shift in pro poor stance of AMC has been evident. The gap between rhetoric of pro poor planning strategies and reality in practice has been increasingly widening. Since 2005 it has been exacerbated by the JNNURM's urban infrastructure projects under which a large

number of urban poor households have been displaced from their informal shelters and informal sector livelihoods in the name of ‘public projects’. The next section discusses how the contesting figures of displaced families, the gap demand supply gap in housing stock of BSUP and the eligibility criteria set by AMC alternative accommodation have led to community mobilisations, civil rights activism and judicial interventions.

### 3.2. Scale of Displacements

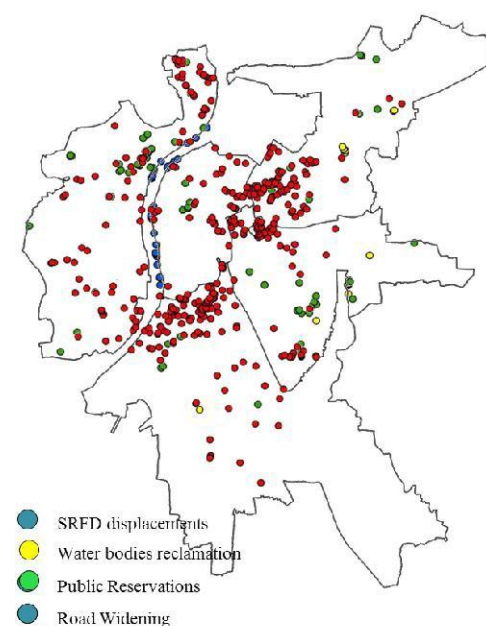
The poor have been displaced under a wide range of ‘public’ or ‘official’ projects such as Sabarmati Riverfront Development (SRFD), Kankaria Lakefront Development, Bus Rapid Transit system, reclamation of public reservations encroached by urban poor and widening of city roads as per recommendations of Development Plan. However, not all of those displaced under such projects are likely to be rehabilitated under BSUP housing. Only those households which can prove their ‘eligibility’ may be rehabilitated.

There are contestations and ambiguities surrounding the estimates about households already displaced and under the threat of displacements in the city. However, integrating scattered data from various sources, it appears that about 34000 to 75000 households are displaced or under threat of displacement under various ‘public’ projects of AMC.

**Table 2: Estimates of development induced displacements of urban poor**

	Slum Survey AMC - MHT (2001-02)  Dwelling units	Sabarmati River Front Displacement Estimates		
		AMC-SRFDCL (1999-2002)  Dwelling units	Samwad NGO (1999-2001)	SNAM CBO (2001)
<b>Total within old AMC boundary</b>	<b>176,754</b>			
<b>AMC development displacements (threat + already evicted)</b>				
<b>A. Road widening threat/ displaced</b>	<b>17240</b>			
<b>B. Evicted / demolished (BRTS, Lakefront)</b>	<b>12384</b>			
<b>C. SRFD</b>	<b>4558</b>	<b>12962</b>	<b>33000</b>	<b>45000</b>
SRFD threat (inside project control line)	4558	5723		
SRFD threat(outside project control line)		7239		
<b>Total AMC development displacements (A+B+C)</b>				
With AMC-MHT survey estimate for SRFDCL	<b>34182</b>			
With AMC-SRFDCL estimate for SRFDCL		<b>42586</b>		
With Samwad NGO estimate for SRFDCL			<b>62624</b>	
With SNAM CBO estimate for SRFDCL				<b>74624</b>

**Figure 4 : GIS mapping of displaced /under threat of displacement slum pockets**

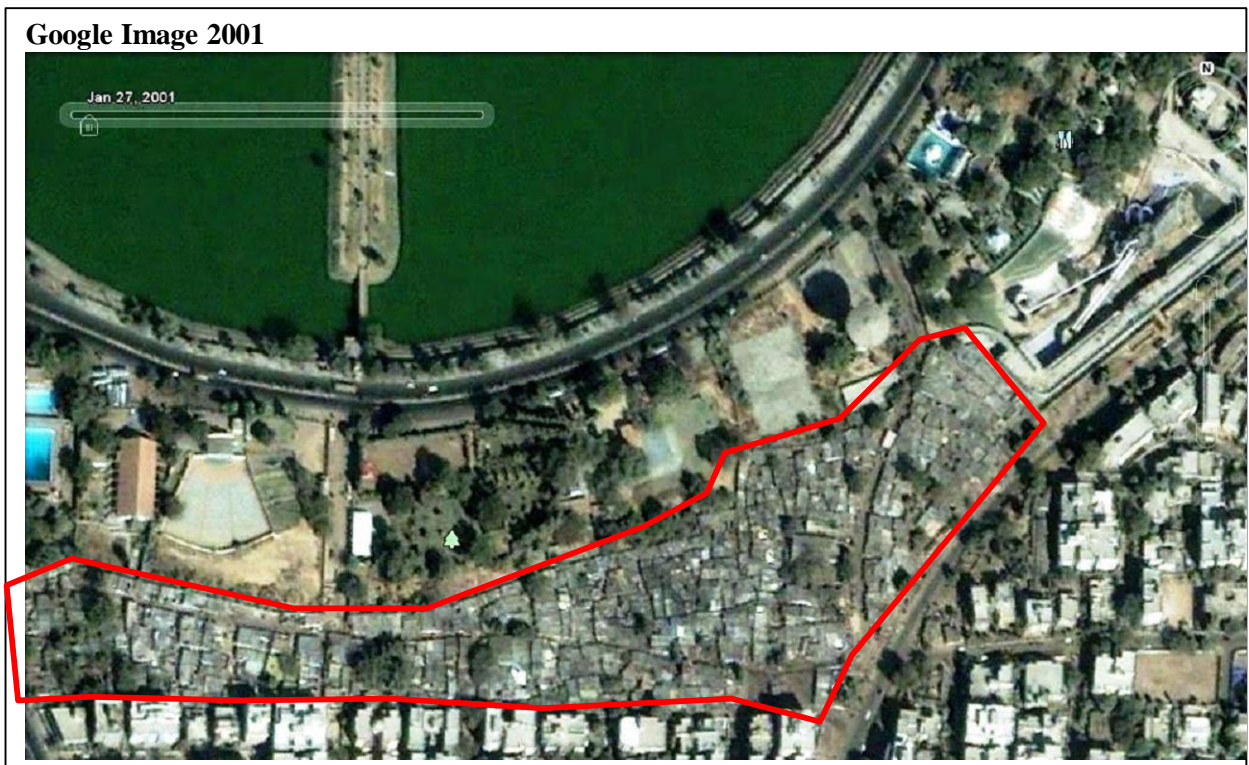


BSUP Phase 1 share (% of total displaced slum Dus)	56%
BSUP Phase 1 share (% of total displaced slum Dus)	45%
BSUP Phase 1 share (% of total displaced slum Dus)	30%
BSUP Phase 1 share (% of total displaced slum Dus)	25%

For instance, as is evident from figure 5, two slum pockets named macchhipir na chhapra and Sndhi camp na chhapra with 244 families and 600 families respectively, were displaced in development of Kankaria lakefront to an interim rehabilitation site on the periphery of the city.



Figure 5 : Satellite image (google) showing slum pockets displacements around Kankaria lakefront



### 3.3. BSUP rhetoric reality gap in community inclusion

As explained before, about 34000 to 75000 households are displaced or under threat of displacement under various ‘public’ projects of AMC. However, the housing stock created by AMC for rehabilitating PAPs under various ‘public’ projects is only 18976 dwelling units.

To set the context for the broader framework of this paper, the following section offers an overview of JNNURM and the reason why all of a sudden displacements are exacerbated in urban India as a whole and in Ahmedabad as a city.

The GoI has committed to invest USD 11,000 million over a period of seven years from the beginning of 2006, in urban infrastructure projects and housing for urban poor through JNNURM, introduced as a mission. JNNURM’s first goal is to improve urban infrastructure and housing and the second is to improve urban governance. A mandatory package of reforms has been tied to the funding of the projects under JNNURM. The urban infrastructure and housing investments are taking place through individual projects approved by the monitoring committee set up at the national level. The cities and the states send in their Detailed Project Reports (DPRs) for each identified project, for funding request. Upon approval of the project, GoI provides a 50 percent of the approved central assistance for the project to the state government. The state government passes this amount along with its contributory share to the local government i.e AMC in case of Ahmedabad. AMC has to also make a contribution to its share of the project funds. On production of bills for utilization of the devolved funds by AMC, GoI sends the next portion of funds for the project.

As project funds are reforms and performance linked, there is a huge pressure on city governments to complete projects on time failing which there is a risk of financial clawback from GoI. This has ensured that projects are not planned properly. Though there is an emphasising rhetoric of community participation in JNNURM, and since a systematic community participation and consensus building is time consuming, it gets undertaken superficially. As a consequence of this haste to implement the JNNURM projects coupled with an increasingly exclusionary approach of AMC towards the needs of urban poor, large scale displacements of the slum dwellers and street vendors have occurred in the city.

The PAPs of various projects affected under the Urban Infrastructure and Governance (UIG) component of the JNNURM are being rehabilitated under the BSUP component of the JNNURM.

**Table 3 : Status of BSUP in AMC**

<b>Phase I BSUP</b>	<b>Status (Sept 2010)</b>	<b>Status (March 2011)</b>
No. of dwelling units sanctioned	18976	
No. of dwelling units constructed	9500	13000
No. of dwelling units allocated	4500	7500
No. of dwelling units where people reside	1500	3500
<b>Phase II BSUP</b>	<b>Approval Stage</b>	<b>Approval Stage</b>
No. of Units proposed	9690	

Currently, BSUP dwelling units can cater to 25 percent to 56 percent of displaced poor families depending on the estimates one adopts as shown in Table 2. While on one hand, a large number of urban poor households are being displaced, on the other hand only a small fraction of them will be formally provided shelter under BSUP.

In the stage of project preparation in BSUP, GoI’s toolkits necessitate transparent and socially penetrative stakeholders consultations. The objective of the consultations is to get citizens and particularly urban poor’s consensus in project identification, project prioritization and willingness & affordability to pay. DPR appraisal guidelines mandate that a DPR must explain whether the (slum

redevelopment) project is insitu redevelopment or relocation, whether new site is in proximity to original site and work place of slum dwellers, whether minimum prescribed dwelling unit size of 25 sqm is complied & whether all basic services and secure tenure are provided (Government of India, 2009).

However, it appears that the stakeholder consultations did not represent all relevant actors and were limited to preselected stakeholders. This was reiterated by a great number of slum dwellers, slum leaders, activists, academicians during the field work. A Civil Rights activist explains that ‘the slum dwellers were not adequately consulted. Even slum leaders were bypassed in the process. The result being that decisions like identification of beneficiaries, location of BSUP sites, dwelling unit size and cost, slum dwellers contribution and affordability, and the relocation criteria which were critical decisions for the slum dwellers were taken irrespective of slum dwellers needs, demands and affordability’.

### 3.4. Eligibility criteria and cutoff date

AMC has adopted discriminatory approaches in terms of eligibility of beneficiaries for BSUP project which have also led to fissures in the community. For families displaced by Sabarmati Riverfront the cut off date is December 2002. Whereas for families displaced by other projects the cutoff date is 1976. This implies that the families have to show proofs of their residence in the demolished slum since 1976 to be entitled for rehabilitation in BSUP site.

**Table 4 : BSUP eligibility criteria for entitlement**

For families displaced by SRFD: cutoff date of December 2002
For families displaced by other ‘public’ projects: cutoff date of 1976

Thus, the displaced families which are not able to produce such proofs of their eligibility through ‘official documents’ are left in the lurch. At the same time, even those eligible for rehabilitation have been relocated in interim Rehabilitation site on the periphery of the city, on undeveloped sites or have been left to their own devices to survive. Whether or not they will get a formal house is not known.

### 3.5. Dwelling unit cost and beneficiary contribution

Not all of the families allocated a BSUP unit will be able to afford to pay their contribution. As per BSUP guidelines, GoI contributes 50 % of the total cost (excepting land cost), state government contributes 20 % and AMC contributes 20 % on a ceiling dwelling unit cost of INR 180000. The balance cost is to be paid by the beneficiary family. This implies that any increase in dwelling unit cost above INR 180000 has to be absorbed by the beneficiary. By September 2010, the unit cost on completion had already increased to INR 225000. Further inflation in case of future DU construction will have to be absorbed by beneficiaries.

To conclude, presently beneficiary contribution is estimated at INR 63000 and in future it may increase. A large number of beneficiary households, which have already incurred high costs in earlier displacements and relocation, are unlikely to be able to meet these additional explicit and other implicit expenses for accessing a BSUP unit.

**Table 5 : BSUP DU cost share ( Sept 2010)**

Component	In INR
Unit cost on completion	225000
GoI contribution (50 % of approved cost of INR 180000)	90000
GoG contribution (20 % of approved cost of INR 180000)	36000
AMC contribution (20 % of approved cost of INR 180000)	36000
Beneficiary contribution ( 10 % or balance which ever is higher)	63000



### 3.6. *Community mobilisation, civil rights activism and judicial intervention*

#### 3.6.1. *Sabarmati Nagrik Adhikar Manch and civil rights activism*

The exclusion of a large slum community from consultation process during formulation of BSUP projects led to uncertainty and insecurity regarding their eligibility as allottee for BSUP, proximity of the site from their social networks and livelihoods in case of allotment and affordability to pay the contribution as per BSUP guidelines. This led to a dramatic pan city mobilization of the slum community under the aegis of Sabarmati Nagrik Adhikar Manch (SNAM) (meaning Sabarmati Citizen's Rights Forum). As explained by one of its founders 'Understanding that such a large mass of population if mobilized can pressurize the state and local government to respond to their needs, we along with other slum community leaders decided to form SNAM'. It is proclaimed as 'a unique, unprecedented people's movement against political hierarchies in their struggle for civil rights'.

SNAM is supported by Civil Rights Organisation through which it files Public Interest Litigations in the High Court of Gujarat against state government & AMC to resolve collective disputes. So far SNAM has filed PILs for the following purposes:

1. For resolving the dispute on actual number of households displaced by SRFD. A household base socio-economic survey undertaken by AMC from 1999 to 2002 identified about 6000 families located in the riverbed as fully affected and about 7000 families as partly affected. However, grass roots survey by Samwad, a NGO identifies about 33000 families as PAPs whereas SNAM's own survey identifies about 45000 families. In view of such a large gap in the number of PAPs from state survey and civil society survey, a PIL was filed by SNAM in the High Court of Gujarat (Special Civil Application No.6280 of 2005) for resolution of dispute on PAP numbers as well as for a transparent rehabilitation policy.

2. In the continuation of the same PIL, SNAM requested for a quasi judicial Grievance Redressal Committee to be formed to resolve individual and collective disputes between AMC and SNAM community. The PIL requested for non partisan members of civil society and academia to constitute this committee. As explained by a civil rights activist 'this demand has roots in the fact that the community had lost confidence in state and local governments to resolve their disputes in a fair and transparent manner'.

In these ongoing PILs the interim judicial orders have so far favoured SNAM. In April 2005 High Court issued an interim order in which AMC was directed not to evict slum dwellers from their huts in riverbed till alternative sites of rehabilitation were planned and provided for by AMC. Though this interim order is still continuing, in May 2011 about 1000 huts in the riverbed were demolished and the slum dwellers were evicted. This led to a High Court under the same PIL by SNAM against further demolition and eviction of slum dwellers. Thus, judicial intervention brings in interim relief to slum community in the river bed from evictions.

On disputes in number of PAPs, High court has passed an interim order for SNAM to produce its enumeration and identification list and then to bring about a consensus between the two lists. Though the process of consensus between tow lists is continuing, with judicial order at least the grass roots list by SNAM has been formally recognised and streamlined in the project.

A rehabilitation policy, albeit vague, is now placed in public domain on the High Court order explaining the expected PAP contribution and number of families fully and partly affected by the project. On a High Court in May 2010, the Grievance Redressal Committee as demanded by SNAM has also been set up with a member from academia, retired senior level government official and deputy municipal commissioners of AMC.

Though judicial interventions have not led to structural changes in BSUP strategies in Ahmedabad, it has brought interim reliefs to the PAPs from evictions and has strengthened the negotiation and networking stance of SNAM with AMC. As explained by a SNAM leader 'responding to judicial orders in favour of SNAM, AMC has begun to cooperate and work closely with SNAM leaders in allotment and dispute resolution cases'.

### 3.6.2. *Contestation over cutoff dates for eligibility and civil rights activism*

AMC till date recognises only those families which have slum survey receipt or any other legitimate document prior to 1976 for any alternative accommodation in case of displacements for 'public projects. This was passed as a resolution (No. 895 dated 28/7/76) by the Standing committee of AMC and till date this policy of cutoff is disputably practiced.

However, in 2005, AMC passed resolution (No.486 dated 30/6/2005) that families residing in slums upto 1995 should not be displaced without alternative accommodation. Effectively this raised the cutoff date from 1976 to 1995 and brought many more slum families within the net of alternative accommodation entitlements in case of displacements.

Citing that such as resolution will encourage encroachers and that AMC does not possess sufficient land to provide alternative accommodation to such a large number, AMC requested the state government (dated 5/1/2006) to suspend the implementation of the aforesaid resolution by exercising its power under section 45(1) of the Municipal Act. Responding to this request by AMC, the state government suspended the implementation of the said resolution (dated 23/6/2006).

A civil rights organisation, Jan Sangharsh Manch (Peoples Struggle Forum) has taken up this issue of reversal of cutoff date from 1995 to 1976 by filing PIL in the High Court of Gujarat (Special civil Application no. 23637 of 2007). In response to this PIL, High Court has stayed the implementation of the suspension order by the state government on extension of the cutoff date to December 1996. It was directed by the High Court that till the state government passes the final order after duly hearing AMC as well as affected parties, 1995 shall remain as the cutoff date.

So far, in this PIL both the High Court and Supreme Court have passed favourable interim orders staying the eviction of slum dwellers with residence proofs upto 1995 without alternative accommodation. However the final decision regarding extension of the cutoff date to 1995 now rests with state government. But in the interim time there is a judicial stay protecting the rights of slum dwellers (with proofs of residence till 1995) against eviction without alternative accommodation.

In the context of the aforesaid on-going PIL, Jan Sangharsh has filed PILs for specific families under threat of displacements under projects of road widening, lakefront development etc. and has secured in most cases high court stay order from eviction or directive for alternative accommodation prior to eviction. For instance in case of PIL filed for the families of two slum pockets Mcchipir and Sindhi Camp displaced under Kankaria lakefront development project discussed earlier, the displaced families, on the directive of High Court (May 2007), were rehabilitated on serviced plots in a resettlement site as an interim accommodation till completion of construction of BSUP dwelling units.

## 4. **Conclusion**

The paper argues that in governance of BSUP in Ahmedabad, India despite formal mandates for community participation, it was limited to superficial consultations with preselected stakeholders allied with the local and state governments. Such community exclusions have led to a dramatic pan city mobilization of the slum community facilitated by Civil Rights Organisations to contest for right to shelter through PILs and judicial interventions. The community networks thus have to take a recourse to judicial interventions for shelter right though it has been upheld by High courts and Supreme Court of India as a fundamental right through interpretation of Article 21 of the Constitution of India assuring protection of life and personal liberty to every citizen of India.

The paper analyses the role of judicial interventions in conditions of ineptitude of planning strategies for community empowerment and concludes that though judicial interventions have not led to structural changes in pro poor strategies in Ahmedabad, they have led to improved responsiveness of the local government to grievances of slum community and have provided interim relief to the community from frequent displacements under 'public' projects.

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