DISTURBED AREAS ACT: NAVIGATING INSTITUTIONAL GHETTOISATION THROUGH A CONSTITUTIONAL LENS

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India is a country that often prides itself on its social, religious, ethnic and linguistic diversity, being home to thousands of such identity groups. However, the treatment meted out to certain groups, both formally and informally, often fails to conform to the principles of equality, liberty, and secularism. The systematic discrimination against Muslims in particular has led to their ghettoisation in states such as Gujarat. This ghettoisation has been formalised through laws such as the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 ('Disturbed Areas Act'). To that end, this paper explores the background of the Act and amendments to the same, particularly in 2020. It goes on to test provisions of the Disturbed Areas Act against Articles 14, 19, and 21 of the Indian Constitution and shows their unconstitutionality. Further, it explores the national impact of the Gujarat High Court's stay of certain provisions and how striking down the provisions is preferred in the present case. The Paper will also undertake a cross-jurisdictional analysis, examining the systems of ethnocratic planning and segregation perpetuated in countries such as South Africa, Israel, and the United States of America, and the Constitutional safeguards (or lack thereof). Lastly, the Paper will address the suggestions of various national and international reports, the United Nations' Special Rapporteur on Adequate Housing in 2017, the Sachar Committee Report, and the Expert Group on Equal Opportunity Commission.

TABLE OF CONTENTS

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I. INTRODUCTION

Historically, 'ghettoisation' has been used as a tactic to deprive minority communities of fair and equal access to educational, medical facilities and other infrastructure. Prominent examples of ghettoisation are the treatment of Jews in Europe and the effect of the Jim Crow laws on Black people in America.[1] The social and infrastructural isolation created by ghettoisation leads to increased levels of crime, poverty and violence.[2]

Contemporary law and policy often appear unproblematic on the surface, yet they aid this process, disguising their true intent behind vague and ambiguous aims of ghettoisation. The population of Muslims in India stands at a substantial 200 million, or fifteen percent of the population, making this the largest minority community in India.[3] However, since independence in 1947, they have experienced systemic discrimination, bias, and threats of violence, notwithstanding constitutional safeguards.[4] This discrimination has reached new and heightened levels in recent years, under the leadership of the Hindu nationalist Bharatiya Janata Party ('BJP').[5]

A stark show of such systemic discrimination against Muslims and other minorities can be seen through the rampant ghettoisation of cities and villages in the country.[6] Stubborn and unrelenting bias in urban housing and land markets plays a major role, further worsened by prejudicial policies in specific areas.[7] For example, the State of Gujarat has long been a seat of communal violence, with a horrific outburst of riots in 2002.[8] The gravity of the situation was compounded by the alleged involvement of the State government and police at

[1] Louis Worth, *The Ghetto*, Vol. 33(1), AMERICAN JOURNAL OF SOCIOLOGY, 59 (1927); Frances L. Edwards & Grayson Bennett, *The Legal Creation of Raced Space: The Subtle and Ongoing Discrimination Created Through Jim Crow Laws*, Vol. 12, BERKELEY J. AFR.-AM. L. & POL'Y, 145 (2010) ('Edwards').
[2] Quentin Wheeler-Bell, *Broken Glass: The Social Evil of Urban Poverty and a Critical Education*, Vol. 33(7), EDUCATIONAL POLICY, 1076 (2019).
[3] Stephanie Kramer, *Population Growth and Religious Composition*, PEW RESEARCH CENTER, September 21, 2023, available at https://www.pewresearch.org/religion/2021/09/21/population-growth-and-religious-composition/ (Last visited on March 10, 2024).
[4] Lindsay Maizland, *India's Muslims: An Increasingly Marginalized Population*, COUNCIL ON FOREIGN RELATIONS, February 28, 2024, available at https://www.cfr.org/backgrounder/india-muslims-marginalized-population-bjp-modi (Last visited on October 14, 2025).
[5] *Id*.
[6] J. S. Bandukwala, *Indian Muslims: Past, Present and Future*, Vol. 41(14), E.P.W., 1343 (2006).
[7] Khurshid Akram, *What We Lose Through the Globalisation of Urban India*, THE WIRE, August 13, 2023, available at https://thewire.in/communalism/what-we-lose-through-the-ghettoisation-of-urban-india (Last visited on October 14, 2025).
[8] Violet Graff, *Hindu-Muslim Communal Riots in India II (1986-2011),* SCIENCESPO, August 20, 2023, available at https://www.sciencespo.fr/mass-violence-war-massacre-resistance/fr/document/hindu-muslim-communal-riots-india-ii-1986-2011.html (Last visited on July 17, 2025).

the time.[9] The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 ('Disturbed Areas Act, 1991' or 'DAA' or '1991 Act'), essentially prohibits interfaith land sale in 'disturbed' areas without permission from the District Collector ('DC'). The parameters for what constitutes 'disturbed' areas have often been twisted to create segregated communities, as demonstrated and argued below.

As the BJP enters its third term, with an explicit aim of building a Hindu majoritarian State, the fate of minority communities hangs in the balance.[10] Recently, the BJP State government in Assam passed a notification restricting the grant of No Objection Certificates ('NOCs') for interfaith land sale, so as to prevent 'fraudulent' transactions.[11] This 'ban' was recently lifted in March 2025, wherein mandatory State approval is required for inter-faith property transactions.[12] Obtaining State approval involves a process of identity verification, as well as disclosure of the purpose of the transaction and "effects on the local community".[13] A similar aim is used in the DAA, with its emphasis on community demographics. A dangerous trend can be observed in legislation, undertaking a 'presumption of fraud' in interfaith matters. Another example is the Special Marriage Act, wherein interfaith couples marrying under the Act are subject to a thirty-day waiting period that invites objections to the union.[14]

Therefore, the scope of this paper focuses primarily on the legal formalisation of ghettoisation through the DAA. Part II of the paper will provide a detailed overview of the DAA, elaborating on its historical background and the amendments it has undergone. Part III of the paper will proceed to critically analyse the constitutionality of the DAA through the lens of Articles 14, 15, 19, and 21 of the Indian Constitution ('Constitution'). It will attempt to comprehensively demonstrate that the Act does not pass the tests laid down under these Articles, thereby proving its unconstitutionality. Part IV will then proceed to assess the difference in 'staying' the provisions of the DAA, as opposed to striking down the same as unconstitutional, arguing that the state of 'unconstitutional affairs' points to the dangers of the adoption of similar mechanisms nationwide. Part V of the paper will conduct a cross-jurisdictional analysis, drawing from the experiences of countries such as South Africa, Israel, and the United States of America, in the context of ethnocratic planning and their respective constitutional safeguards. Finally, Part VI will analyse the observations in various international committee reports, such as the United Nations' Special Rapporteur on Adequate Housing in 2017, the Sachar Committee Report, and the Expert Group on Equal Opportunity Commission, and argue for a standalone and comprehensive legislation to tackle housing discrimination. Part VII will conclude the paper.

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[9] Noamankhan Pathan, *21 Years Later, Why the Gujarat Riots Continue to Define India Today*, NEWSLAUNDRY, November 6, 2023, available at https://www.newslaundry.com/2023/11/06/21-years-later-why-the-gujarat-riots-continue-to-define-india-today (Last visited on October 14, 2025).

[10] Lindsay Maizland, *Indian Muslims: An Increasingly Marginalized Population*, COUNCIL ON FOREIGN RELATIONS, March 18, 2024, available at https://www.cfr.org/backgrounder/india-muslims-marginalized-population-bjp-modi (Last visited on October 14, 2025).

[11] THE HINDU, *Assam Suspends NOC for Sale of Land Between People of Different Religions for Three Months*, available at https://www.thehindu.com/news/national/other-states/assam-suspends-noc-for-sale-of-land-between-people-of-different-religions-for-three-months/article67979389.ece (Last visited on October 14, 2025).

[12] Preety Priyadarshini, *Assam Government Allows Inter-Religious Land Transfers, But State Approval Mandatory*, NEWS 18, March 11, 2025, available at https://www.news18.com/india/assam-government-allows-inter-religious-land-transfers-but-state-approval-mandatory-9257251.html (Last visited on October 14, 2025).

[13] *Id.*

[14] The Special Marriage Act, 1954, §§7, 8.

II. THE DISTURBED AREAS ACT, 1991

The British left India in August 1947, after 300 long years of colonisation. The ecstasy of independence was accompanied by the bloodbath of partition. Across the Indian subcontinent, communities that coexisted for millennia began to attack each other. This terrifying sectarian violence was especially concentrated in the bordering provinces of Punjab, Bengal, and Sindh, where massacres, arson, forced conversion, mass abductions and heinous sexual violence were not uncommon.[15] By 1948, as migration drew to a close, close to fifteen million people had been uprooted, of which two million were dead.[16] Gujarat's lived experience of the partition is raw, as it has remained a quagmire of communal conflict ever since. The first major post-partition violence took place in 1969, and a pattern of movements against Muslims by far-right Hindu groups emerged.[17] These groups included the Vishwa Hindu Parishad, the Rashtriya Swayamsevak Sangh and other such 'saffron' organisations, collectively referred to as the 'Sangh Parivar'. The BJP is also considered a member of this political family, with its close association to the 'Hindutva' ideology, and having also been accused of being complicit in the 2002 pogroms.[18]

These organisations conducted mob attacks against Muslims in multiple spurts post-partition, which heightened in the 1980s. For example, the 1985 Ahmedabad riots, initially stemming from upper caste discontent regarding reservation policies, turned into a targeting of all minorities, including Muslims, who were seen as scapegoats.[19] This constant violence created distinct neighbourhoods of Hindus and Muslims, wherein Muslims were pushed out of 'elite' areas and into the ghettoised Juhapura, which is neglected by State authorities to date.[20] This process occurred gradually, wherein lower caste Hindus would move out of Muslim majority areas and into the eastern urban centre, and upper caste Hindus would move into affluent Western suburbs.[21] This east and west is in relation to the Sabarmati river banks, with industrial centres being present in the east, and therefore workers settling in that area. In 1991, Muslim shops and homes in elite areas were attacked, pushing them into the bordering Juhapura and Vejalpur areas.[22] In this way, a patchwork of segregated Hindu and Muslim communities was created. These tensions culminated in the 2002 pogrom, one of the worst instances of post-partition communal violence, in which over 100,000 Muslims were pushed into refugee camp-like living conditions.[23]

A. BACKGROUND OF THE ACT

[15] Rebecca M. Kulik, *Partition of India*, BRITANNICA, available at https://www.britannica.com/event/Partition-of-India (Last visited on October 14, 2025).
[16] William Dalrymple, *The Great Divide*, THE NEW YORKER, June 15, 2015, available at https://www.newyorker.com/magazine/2015/06/29/the-great-divide-books-dalrymple (Last visited on October 14, 2025).
[17] Neera Chandhoke, *Civil Society in Conflict Cities: The Case of Ahmedabad*, 1, 2 (LSE Crisis States Research Centre, Working Paper No. 64, 2009).
[18] https://journals.sagepub.com/doi/abs/10.1177/0032329212461125
[19] Ornit Shani, COMMUNALISM, CASTE AND HINDU NATIONALISM: THE VIOLENCE IN INDIA, Chapter 4, 111 (Cambridge University Press, 2007) ('Shani').
[20] Sheba Tejani, *Saffron Geographies of Exclusion: The Disturbed Areas Act of Gujarat*, Vol. 60(4), URBAN STUDIES, 597–619 (2022) ('Tejani').
[21] *Id*.
[22] *Id*.
[23] SSRC, *Understanding Gujarat Violence*, March 3, 2020, available at https://items.ssrc.org/from-our-archives/understanding-gujarat-violence/ (Last visited on October 14, 2025).

Modern-day Ahmedabad, the largest city in the State of Gujarat, is clearly divided into the eastern and western regions, separated by the banks of the Sabarmati River.[24] The eastern zone is characterised by a large Muslim population, while the western zone is home to most upper and middle-class Hindus.[25] The reasons behind such divisions are inherently connected to incidents of sectarian violence against Muslims in the city, as elaborated above.[26]

In the background of such communal violence, the then-ruling Congress introduced the initial version of the DAA in 1986, whereby areas which had experienced riots or communal violence between March 1985 and October 1986, alongside other parts of the city, were labelled as 'disturbed' by the State government.[27] The DAA essentially imposed certain conditions in the field of property transactions, whereby people would have to mandatorily receive permission from the DC to purchase property in 'disturbed' areas. The DC would have to conduct an enquiry into the free will of parties involved and the 'fairness' of the transaction, in terms of price.[28] The initial intention of the DAA was to prevent activities such as bootlegging and 'distress sales'.[29] Ironically, the DAA sought to reverse the situation on the ground post-riots and strengthen the formation of heterogeneous communities. Later, this version was repealed and replaced with the 1991 Act; however, the only difference was that the 1991 Act allowed the government to deem areas as 'disturbed', provided they experienced riots or communal violence for a 'substantial period', which is not defined and left to the State Government's discretion,[30] effectively broadening the State's powers.

B. NEW DEVELOPMENTS

In 2009, the State government under Narendra Modi — currently the Prime Minister of India — rendered key modifications to the DAA which included making offences under the same cognisable,[31] substantially expanding the DC's power by enabling *suo moto* initiation of formal enquiries into such transactions,[32] and introducing a criminal penalty of six months imprisonment or a monetary fine or both, for failure to adhere to the DAA.[33]

Recently, in 2020, the State Government announced modifications to the Act, requiring individuals to get an NOC from the requisite authorities for property transactions even within 500 metres of the notified 'disturbed area'.[34] Moreover, authorities were now empowered to renew notifications regarding an area being 'disturbed' based on their own

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[24] Laurent Gayer & Christophe Jaffrelot, MUSLIMS IN INDIAN CITIES: TRAJECTORIES OF MARGINALISATION, 66 (Hurst Publishers, 2012).
[25] *Id*., 67.
[26] Shani, *supra* note 19.
[27] The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1986, §3; Tejani, *supra* note 20.
[28] The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in the Disturbed Areas Act, 1991, §4(2)(a).
[29] Devansh Shrivastava & Anubhav Bishen, *Coexistence or Segregation? Examining Constitutional Public Policy and the Disturbed Areas Act 1991 in Gujarat*, Vol. 10, THE INDIAN J. OF CONST. L., (2023).
[30] Madanlal Jindal, GUJARAT LOCAL ACTS (India Publishing House, 3rd edn., 2006).
[31] The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas (Amendment) Act, 2010, §5.
[32] *Id*., §3.
[33] Tejani, *supra* note 20.
[34] The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in the Disturbed Areas Act, 1991, §2(a), *inserted vide* The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in the Disturbed Areas (Amendment) Act, 2019; TNN, *Disturbed Areas Act: Gujarat govt to withdraw amendments*, THE TIMES OF INDIA, October 26, 2023, available at https://timesofindia.indiatimes.com/city/ahmedabad/disturbed-areas-act-gujarat-govt-to-withdraw-amendments/articleshow/104710973.cms (Last visited on October 14, 2025).

subjective judgement, which could lead to situations wherein the DAA was permanently imposed in certain areas.[35] Additionally, stricter penalties were imposed for violations of the DAA.[36] The amendments critically attempted to discourage people from settling in a region primarily populated by members of a different religious group, with "demographic equilibrium" acting as the primary parameter to maintain public order in disturbed areas.[37] The grounds for declaring an area as 'disturbed' now include situations where "improper clustering of persons of one community has taken place or is likely to take place where mutual and peaceful coherence amongst different communities may go haywire in that community".[38]

In response to such modifications, the Jamiat Ulama-e-Hind filed a petition before the Gujarat High Court, claiming that the 2020 Amendment was "an affront to the constitutional value and right of equality, and the constitutional morality that envisions a plural, multicultural and diverse society in India".[39] The complainants argued that §§3(1), (2), and (3) of the DAA, by providing such 'subjective' judgement to the authorities in permanently declaring an area as disturbed, essentially legalised the institutionalised segregation of religious communities.[40] They further contended that the law violated Articles 19(1)(e), 19(5), and 21 of the Constitution, as it introduced unreasonable restrictions on an individual's freedom to reside anywhere in Indian territory.[41]

In 2021, these modifications were stayed by the Gujarat High Court.[42] However, the question of unconstitutionality of the provisions, and the ground reality of the Act, were not examined by the Court at length in its order.[43] The effect of simply staying these amendments without declaring them unconstitutional or even addressing their constitutionality is seen to have a snowball effect, wherein the on-ground situation remains unchanged, while other States such as Assam are rolling out similar notices, as discussed above.

III. ANALYSING THE CONSTITUTIONALITY OF THE DAA THROUGH THE LENS OF FUNDAMENTAL RIGHTS

This Part of the Paper examines the constitutionality of the DAA by analysing its validity under Articles 14, 15, 19, and 21 of the Constitution. It then proceeds to assess the judicial approach of 'staying' the law, as opposed to outrightly striking the same down, and the preventive measures that can be undertaken by the courts therein.

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[35] *Id*.
[36] *Id*.
[37] *Id*., The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in the Disturbed Areas (Amendment) Bill, 2019, §3; Devansh Shrivastava & Anubhav Bishen, *Coexistence or Segregation? Examining Constitutional Public Policy and the Disturbed Areas Act 1991 in Gujarat*, Vol. 10, INDIAN J OF CONSTITUTIONAL L., 6 (2021).
[38] The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from premises in the Disturbed Areas (Amendment) Act, 2020, Cl. 3(1)(ii).
[39] BAR & BENCH, *Jamiat-Ulama-e-Hind Claims Gujarat Law "brazenly" Promotes Ghettoisation, Segregation of Muslims, Hindus; High Court stops Implementation*, January 20, 2021, available at https://www.barandbench.com/news/litigation/gujarat-high-court-restrains-gujarat-government-notifying-disturbed-area-amended-disturbed-areas-act (Last visited on October 14, 2025).
[40] TNN, *Disturbed Areas: Changes Stayed*, THE TIMES OF INDIA, January 21, 2021, available at https://timesofindia.indiatimes.com/city/ahmedabad/disturbed-areas-changes-stayed/articleshow/80374083.cms (Last visited on October 14, 2025).
[41] *Id*.
[42] Jamiat Ulama-E-Hind Gujarat v. State of Gujarat, Special Civil App. No. 1011 Of 2021, Order dated January 20, 2021, (Gujarat High Court) (Unreported).
[43] *Id*.

A. ARTICLE 14

Article 14 of the Indian Constitution espouses that the "State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".[44] Courts, while carrying out legislative review, have developed two major doctrines, that is, the 'classification test' or the 'old doctrine' and the 'arbitrariness test' or the 'new doctrine',[45] to determine whether certain laws are unconstitutional. To that end, this Paper will endeavour to show how both doctrines point to the unconstitutionality of the DAA.

The classification test, as established in the *State of West Bengal* v. *Anwar Ali Sarkar* case ('Anwar Ali Sarkar'),[46] relies on analysing two primary elements: *first*, whether the classification between groups is carried out on the basis of intelligible differentia; and *second*, whether there is a rational nexus between the classification and the objective of the law itself.[47]

When ascertaining the presence of intelligible differentia, an important question considered by Courts is whether the same is clear or vague.[48] Notably, when 'excessive and unguided power' is meted out by the Legislature to the Executive with respect to such classifications, there is an implication that this requirement is not satisfied.[49] Moreover, the wording of Article 15(1) of the Constitution, which prohibits the State from discriminating against citizens on grounds of religion, race, caste, sex, place of birth or any of them, also needs to be taken into consideration when ascertaining whether an intelligible differentia is present.[50] In *State of Madhya Pradesh* v. *Baldeo Prasad* ('Baldeo Prasad'), §4 of the Central Provinces and Berar Goondas Act, 1946 allowed the District Magistrate (in an area declared by the State government to be 'disturbed') to prohibit persons classified as 'goondas' from leaving, or not enter a particular part of the district.[51] The District Magistrate could do so when he felt that the presence of such a person would harm the interests of the general public.[52] Despite adequate procedural safeguards being provided by the Act in question, the Supreme Court of India ('SCI') nonetheless struck the same down on grounds of unconstitutionality.[53] This was primarily because the definition of 'goonda' (a hooligan, rogue, or vagabond posing a danger to public peace or tranquillity) was inclusive in nature and did not provide the tests to determine when a person would fall within the same, in the absence of which the discretion would lie with the District Magistrate, which would essentially be improper. Therefore, while the case explicitly dealt with the question of violation of Article 19(5) of the Constitution, it highlights that vagueness in the powers and tests to be applied by quasi-judicial authorities points to the unconstitutionality of said provisions.

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[44] The Constitution of India, 1950, Art. 14.
[45] Tarunabh Khaitan, *Equality: Legislative Review under Article 14* in THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION (Sujit Choudhry et al. eds., Oxford University Press, 2016) ('Khaitan').
[46] *Id*., State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1, ¶85.
[47] Gautam Bhatia, *The Citizenship (Amendment) Act Challenge: Three Ideas*, CONSTITUTIONAL LAW AND PHILOSOPHY, January 21, 2020, available at https://indconlawphil.wordpress.com/2020/01/21/the-citizenship-amendment-act-challenge-three-ideas/#:~:text=Thus%20far%2C%20the%20constitutional%20debate,the%20individuals%20and%20groups%20it (Last visited on October 14, 2025).
[48] Khaitan, *supra* note 45.
[49] State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1, ¶¶38, 39; Khaitan, *supra* note 45.
[50] Khaitan, *supra* note 45.
[51] State of M.P. v. Baldeo Prasad, 1960 SCC OnLine SC 321, ¶2.
[52] *Id.*
[53] M.P. Jain, UNIVERSAL INDIAN CONSTITUTIONAL LAW (LexisNexis, 8th edn., 2024) ('M.P. Jain').

When analysing the element of 'rational nexus', the Court in Anwar Ali Sarkar observed that Article 14 of the Constitution would preclude the application of laws having 'colourable legislative expedient', where, under the guise of "doing what is constitutionally permissible, in substance and purpose, seeks to effect discrimination".[54] In *Subramanian Swamy* v. *CBI*, the SCI widened the rational nexus requirement by emphasising that the statute's intended aim itself must be legitimate.[55]

While the classification test continues to be utilised by courts, there has been a significant shift in 'Article 14 jurisprudence'. Bhagwati J., in *EP Royappa* v. *State of Tamil Nadu*, introduced a new standard around Article 14 of the Constitution, whereby mere 'arbitrariness' would be enough to strike down a law as unconstitutional.[56] Cases such as *Anuj Garg* v. *Hotel Association of India* and *Air India* v. *Nargesh Meerza* highlight that the presence of a seemingly reasonable or benevolent objective does not immunise a law from being struck down if its implementation results in exclusion or furthers the very biases it aimed to curb.[57]

Moreover, in the landmark case of *Navtej Johar* v. *Union of India* ('Navtej Johar'), the SCI unanimously adopted the test of 'manifest arbitrariness', first introduced in *Shayara Bano* v. *Union of India* ('Shayara Bano') as follows:

> "The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary".[58]

In Navtej Johar, while striking down §377 of the Indian Penal Code, 1860 ('IPC'), the Court explicitly addressed the legislative wisdom and purpose behind enacting the aforementioned law, showing an enhanced degree of arbitrariness.[59] The test has been subsequently applied in multiple cases. It was most recently applied in the Electoral Bonds case, wherein the SCI observed that a law can be struck down whenever "(a) the legislature fails to make a classification by recognising the degrees of harm; and (b) the purpose is not in consonance with constitutional values".[60]

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[54] Khaitan, *supra* note 45.

[55] Varun Kannan, *The Constitutionality of the Citizenship (Amendment) Act – A Rejoinder*, CONSTITUTIONAL LAW AND PHILOSOPHY, January 3, 2020, available at https://indconlawphil.wordpress.com/2020/01/03/guest-post-the-constitutionality-of-the-citizenship-amendment-act-a-rejoinder/ (Last visited on October 14, 2025); Subramanian Swamy v. Director, Central Bureau of Investigation, (2014) 8 SCC 682, ¶58.

[56] Khaitan *supra* note 45; EP Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.

[57] Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1, ¶¶43, 46, 47; Khaitan, *supra* note 45; Air India v. Nargesh Meerza (1981) 4 SCC 335, ¶¶82, 86, 90, 92, 96.

[58] Navtej Johar v. Union of India (2018) 10 SCC 1, ¶253; Shayara Bano v. Union of India, AIR 2017 9 SCC 1 (SC), ¶101.

[59] Navtej Johar v. Union of India (2018) 10 SCC 1, ¶¶238–240.

[60] Assn. for Democratic Reforms (Electoral Bond Scheme) v. Union of India, (2024) 5 SCC 1, ¶215; Agatha Shukla, *Doctrine of Manifest Arbitrariness Can be Used to Strike Down Laws: Supreme Court Reiterates in Electoral Bonds Case*, VERDICTUM, February 17, 2024, available at https://www.verdictum.in/court-updates/supreme-court/supreme-court-association-for-democratic-reforms-and-anr-v-union-of-india-and-ors-manifest-arbitrariness-electoral-bonds-case-1521188 (Last visited on October 14, 2025).

In the case of the DAA, the process starts when individuals approach the DC under §4(2)(a) in relation to transfer of immovable property in a declared 'disturbed area'.[61] The sellers are, to that end, required to submit details such as the deed of conveyance of the property which explicitly details the religions of the parties, a stark departure from the standard procedure followed in other States.[62] Here, the DC is empowered to hold a formal inquiry into whether the transfer "was made by free consent of the transferor and the transferee and for a fair value of the immovable property", and on the basis of the same, either accepts or rejects the application.[63]

On paper, while such provisions seem simple enough to inquire into, the ground reality is that the DC's powers are largely subjective, and allow them to reject applications even if the qualifiers of free consent and free value are arguably satisfied.[64] This parallels the reasoning provided in Baldeo Prasad, where the vague and overbroad discretion conferred on the District Magistrate rendered the law in question unconstitutional. The broad powers provided to the DC here, without any clear standards as to how the same should be utilised, invite arbitrary application.

Moreover, Sheba Tejani highlights how even factors such as 'non-vegetarianism' can become a guiding factor in considering whether 'riots' can be caused by a person, a discriminatory norm that, when combined with the subjective powers of the DC, can reinforce exclusion, so as to protect 'social harmony'.[65] Therefore, the wide powers accorded to the DC under §4 of the DAA allow for a basis of the classification that itself is unclear and vague, and allows for its rampant misuse (such as the usage of dietary preferences in the determination of valid property transactions). The general vagueness of many provisions of the DAA has also been challenged before the Court, albeit with limited success.[66]

Moreover, in the past, authorities have declared areas such as Limbayat and Vadodara as 'disturbed', despite no evidence of any hostile conditions.[67] Despite the DAA providing for the withdrawal of this declaration, to date, no area has been stripped of its disturbed status, despite no evidence of riots or communal violence for several years.[68] These classifications, too, remain indefinite and lack any objective framework for review.

These issues have been amplified through the 2020 Amendment. Through the same, DC additionally had the power to assess the likelihood of 'polarisation' or 'improper clustering' of individuals from specific communities in certain areas, disrupting 'demographic equilibrium' in the process. This, when read with the definition of 'proper clustering' under §2(d) of the 1991 Act as clustering of persons having common "norms, religion, values, or

[61] The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in the Disturbed Areas Act, 1991, §4(2)(a).
[62] Tejani, *supra* note 20.
[63] The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in the Disturbed Areas Act, 1991, §4(2)(b).
[64] Monami Gogoi, *Gujarati Muslims Struggle to Buy Hindu Property. Disturbed Areas Law Weaponises Real Estate*, January 23, 2024, available at https://theprint.in/ground-reports/gujarati-muslims-struggle-to-buy-hindu-property-disturbed-areas-law-weaponises-real-estate/1934615/ (Last visited on October 14, 2025) ('Gogoi').
[65] *Id*., Tejani, *supra* note 20.
[66] *See* SNA Infraprojects Private Limited v. Sub Registrar, 2011 SCC OnLine Guj 2504.
[67] M.S. Nileena, *The Gujarat Government is Enforcing Communal Segregation and Criminalising Property Transfers*, THE CARAVAN, August 21, 2019, available at https://caravanmagazine.in/policy/the-gujarat-state-is-enforcing-communal-segregation-and-criminalising-property-transfers (Last visited on October 14, 2025).
[68] Tejani, *supra* note 20.

identity",[69] clearly legitimises discrimination. It remains unclear how such provisions and their ideologies have any connection to maintaining 'free consent' or 'fair value', and therefore do not fulfil the rational nexus test either.

The rather explicit implication here is that for a demographic equilibrium to be maintained, a model wherein neighbourhoods have communities belonging to the same religion, caste and so forth, which would 'prevent' communal tensions and riots, was required. This is further supported by the fact that religious identities are now inseparable from certain areas,[70] solidifying the practice of segregation in the State.[71]

Prior to the amendments, the Gujarat High Court had on multiple occasions defended the constitutionality of the DAA, stating that its objective was not to segregate communities and prevent inter-faith transitions, but rather to ensure that transfers were taking place with 'free consent' at a 'fair value'.[72] However, subsequent amendments significantly alter this premise by introducing the aspect of maintaining a 'demographic equilibrium' as a guiding criterion for assessing and permitting property transactions. This shift in the laws underlying purpose is not merely semantic. Rather, it represents a move to enforce homogeneous demographic compositions based on religion or other community identities. Additionally, the idea of a 'demographic equilibrium' lacks any legal or objective standard, rendering it open to misuse. Further, it enforces the idea that certain demographic arrangements are 'preferable' to others, which is incompatible in a pluralist and secular society such as India.

Additionally, the enactment of the DAA was in the midst of intense communal riots and violence, and this background has naturally influenced various provisions in the Act itself.[73] However, under the guise of protecting civilians, it has actually led to further communal segregation.[74] Cases such as Anuj Garg show how even laws having 'valid' reasons to protect certain classes of citizens cannot be disconnected from the social harms they perpetuate.[75] In the context of the DAA, communal violence has actually increased in Gujarat in recent years, showing that the law has not really achieved its objective of preventing such violence.[76] Additionally, statements from members of the State Assembly and other BJP-affiliated leaders also show how the DAA serves as a means to enforce institutional segregation.[77] For instance, Bharat Shah, the mayor of Vadodara, along with fifty-two housing societies, threatened to

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[69] *See* The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in the Disturbed Areas (Amendment) Bill, 2019, §2(d).

[70] Devansh Shrivastava & Anubhav Bishen, *Coexistence or Segregation? Examining Constitutional Public Policy and the Disturbed Areas Act 1991 in Gujarat*, Vol. 10, THE INDIAN J. OF CONST. L., (2023) ('Shrivastava').

[71] *Id*.

[72] Shrivastava, *supra* note 70; Bharatkumar Shankarlal Somani v. State of Gujarat, Special Civil App. No. 11362 of 2017 (Gujarat High Court) (Unreported); Sudhakar Chudaman Borse v. State of Gujarat, Special Civil App. No. 10628 of 2016 Gujarat High Court) (Unreported); Onali Ezazuddin Dholkawala v. State of Gujarat, Special Civil App. No. 13041 of 2019 Gujarat High Court) (Unreported).

[73] The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in the Disturbed Areas Act, 1991, §3(1).

[74] M.S. Nileena, *The Gujarat Government is Enforcing Communal Segregation and Criminalising Property Transfers*, THE CARAVAN, August 21, 2019, available at https://caravanmagazine.in/policy/the-gujarat-state-is-enforcing-communal-segregation-and-criminalising-property-transfers (Last visited on October 14, 2025).

[75] Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1, ¶¶43, 46, 47.

[76] Rakesh Dubbudu, *How Many Communal Riots Took place in 2016? NCRB & Home Ministry Differ*, BUSINESS STANDARD, December 11, 2017, available at https://www.business-standard.com/article/current-affairs/how-many-communal-riots-took-place-in-2016-ncrb-home-ministry-differ-117121100086_1.html (Last visited on October 14, 2025).

[77] *See* SNA Infraprojects Private Limited v. Sub Registrar, 2011 SCC OnLine Guj 2504; ABP News, *Watch Alleged Hate Speech of Controversial VHP Leader Praveen Togadia*, YOUTUBE, April 21, 2014, available at https://www.youtube.com/watch?v=zatIRhuiuuY&ab_channel=ABPNEWS (Last visited on October 14, 2025).

boycott the general elections, due to the building of a 'Muslim colony' in a Hindu-dominated area.[78] Therefore, while the aim of the legislation might have been noble, its implementation does nothing but further the very issues of communal hatred and 'othering' which it sought to reduce.

Finally, as the judgment in Electoral Bonds reiterates, the 'degree of harm' suffered by members of minority communities as a result of inherently unequal situations has clearly not been recognised by the State Legislature.[79] This concept stems from the fact that not all persons are equally placed in society, and the legislature must confine its benefits and restrictions on such groups, only when the "need is the clearest".[80] Such 'harms' are not merely speculative or incidental, and manifest itself in multiple forms such as persistent segregation, reduced access to essential resources, exclusion from economic opportunities, as will be emphasised in Part VI.

B. ARTICLE 15

Article 15 of the Constitution prohibits the State from discriminating against any citizen on the grounds of religion.[81] This Part of the Paper will address how, *first*, the DAA perpetuates indirect discrimination, and *second*, how case law surrounding housing discrimination in India further supports its unconstitutionality.

1. INDIRECT DISCRIMINATION OR DISPARATE IMPACTS ANALYSIS

In order to analyse the phenomenon of 'indirect discrimination' within Article 15 of the Constitution, it is imperative to understand the crucial distinction between 'direct' and 'indirect' discrimination. 'Direct' discrimination focuses on the discrimination against persons on the basis of protected characteristics such as race, gender, religion, and so forth,[82] for instance, the refusal of employment in a factory to women, with men facing no such restriction. On the other hand, 'indirect' discrimination is concerned with the effects of a particular legal measure.[83] This concept stems from the United States ('US') case of *Griggs* v. *Duke Power*, where African-American workers were restricted to lower-paying jobs due to the introduction of certain aptitude and IQ tests as prerequisites for high-ranking jobs.[84] These tests proved to be a significant barrier, with White workers far outperforming their Black peers due to the inferior education of the latter.[85] This link between education and inequality is understood by observing that when race is a factor in determining where one lives and goes to school (and thereby the resources their schools can access), then race also plays a role in determining their rates of graduation, test scores, and so forth.[86] Crucially, the Supreme Court

[78] THE INDIAN EXPRESS, *Vadodara Residents Threaten Poll Boycott Against 'Muslim takeover of locality', Former Mayor Leads Campaign*, March 19, 2019, available at https://indianexpress.com/elections/vadodara-residents-threaten-poll-boycott-against-muslim-takeover-of-locality-former-mayor-leads-campaign-5633027/ (Last visited on October 14, 2025).
[79] Association for Democratic Reforms v. Union of India, (2024) 5 SCC 1, ¶215.
[80] *Id*., ¶201.
[81] The Constitution of India, 1950, Art. 15.
[82] Dhruv Gandhi, *Locating Indirect Discrimination in India: A Case for Rigorous Review Under Article 14*, Vol. 13(4), NUJS L. REV., 4 (2020) ('Gandhi'); Sandra Fredman, DISCRIMINATION LAW, 166 (Oxford University Press, 2nd ed., 2011).
[83] *Id*.
[84] Griggs v. Duke Power Co., 401 U.S. 424 (1971), 429–433 (Supreme Court of the United States) ('Griggs').
[85] *Id.*
[86] GERALD R. FORD SCHOOL OF PUBLIC POLICY, *Income, Segregated Schools Drive Black-White Education Gaps, Study Finds*, October 19, 2022, available at https://fordschool.umich.edu/news/2022/income-segregated-schools-drive-black-white-education-gaps-study-finds (Last visited on October 14, 2025); Griggs, *supra* note 84.

of the US held that, despite the pre-requisite test being applicable to all persons regardless of race, this supposed neutrality was actually discriminatory in operation.[87] Deborah Hellman's understanding of indirect discrimination is also particularly apt in this situation. According to Hellman, a core tenet of indirect discrimination can be seen when there is a compounding of prior injustice for vulnerable persons.[88] Jurisdictions around the world, including India,[89] have incorporated the principle of indirect discrimination, [90] with scholars such as Dhruva Gandhi arguing that Article 15(1) of the Constitution itself accounts for the same.[91]

Gandhi has argued that the application of manifest arbitrariness in Navtej Johar, as explained earlier, was actually a form of acknowledging the doctrine of indirect discrimination,[92] since the SCI struck down a supposedly 'neutral' provision in the IPC, since the effect of the same was to restrict the consensual relations between same-sex persons.

This approach was crystallised in *Nitisha* v. *Union of India* ('Nitisha'), where the SCI directly utilised the indirect discrimination test, observing that ground realities are essential to determine factual equalities.[93] The SCI laid down a 2-pronged test to determine whether supposedly neutral laws were indirectly discriminatory.[94] *First*, the Court must examine "whether the impugned rule disproportionately affects a particular group"; and *second*, a plaintiff must show that the measure had the "effect of reinforcing, perpetuating, or exacerbating disadvantage", which includes economic disadvantages, social and psychological harms, as well as historical and systemic injustices.[95] This reading found support in the opinion rendered by Chandrachud J. in *Supriyo@Supriya Chakraborty* v. *Union of India* ('Marriage Equality'), wherein he observed that:

> "[t]he objects (of the legislation or the policy involved) are irrelevant. It is their impact, or the effect, on the individual, which is the focus of the court's inquiry. In one sense, the development of the indirect discrimination test, is a culmination, or fruition of the methods which this court adopted, in judging the discriminatory impact of any law or measure, on an individual".[96]

In the case of the DAA, even prior to the 2020 Amendment, the Act required the Collector to declare that "the transfer of immovable property was made by free consent of the transferor and the transferee and for a fair value of the immovable property so transferred".[97] Here, despite the neutral language of the provision, when looked at in the context of the Nitisha framework, it leads us to the conclusion that indirect discrimination is being perpetuated.[98] For instance, the administrative requirement of disclosure of religion of parties already precludes any 'neutral' or 'religion-less' application of the DAA, bringing to light the

[87] *Id*., 431.
[88] Deborah Hellman, *Indirect Discrimination and the Duty to Avoid Compounding Injustice*, (University of Virginia School of Law Public Law and Legal Theory Research Paper Series, Paper no. 53, 2017).
[89] Mihirn, *Rethinking "Manifest Arbitrariness" in Article 14: Part II – Disparate Impact and Indirect Discrimination*, CONSTITUTIONAL LAW AND POLICY, May 21, 2020, available at, https://indconlawphil.wordpress.com/2020/05/21/guest-post-rethinking-manifest-arbitrariness-in-article-14-part-ii-disparate-impact-and-indirect-discrimination/ (Last visited on October 14, 2025) ('Mihirn').
[90] Gandhi, *supra* note 82.
[91] Gandhi, *supra* note 82.
[92] Mihirn, *supra* note 89.
[93] Nitisha v. Union of India, (2021) 15 SCC 125, ¶57.
[94] *Id*., ¶82.
[95] *Id*.
[96] Supriyo v. Union of India, 2023 SCC OnLine SC 1348, ¶110
[97] The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in the Disturbed Areas Act, 1991, §4(2)(a).
[98] Gogoi, *supra* note 64.

fact that religious groups are primarily the targets of such laws. Additionally, as elaborated in Part III.A, the vagueness of terms within the DAA lends itself to gross misuse.[99] In applying the indirect discrimination test here, it is crucial to observe the provisions in light of the existing historical and entrenched patterns of discrimination (see Part II.A),[100] and how they serve to reinforce and legitimise the exclusion of minority communities. Empirical studies show that minority groups facing housing discrimination are at a significant disadvantage in several other fields as well, which include education, healthcare, and economic opportunities, as will be further expanded in Part VI of the Paper, which 'compound' the harms faced by them.

2. HORIZONTAL DISCRIMINATION: THE ZOROASTRIAN SOCIETY & IMA CASE

To further the discussion on the aspect of legal segregation in India, it is useful to look past the decisions of the SCI dealing with similar issues. In the 2005 case of *Zoroastrian Cooperative* v. *District Registrar* ('Zoroastrian'), the impugned bye-law only allowed members of the Parsi community to become members of the Zoroastrian Cooperative Housing Society, the result being that only Parsis could purchase property under the same.[101] When this law was challenged before the SCI, it observed that a housing society is held together by a "bond of common habits and common usage among the members which should strengthen their neighbourly feelings". It was stated that these aspects were commonly found amongst members of the same community or caste.[102] Moreover, bye-laws, unlike a statute, were only "binding between the persons affected by them" and therefore would not be subject to fundamental rights tests.[103]

While this case has been subject to criticism from various scholars for valid reasons, it is important to note that the judgment also affirms certain principles which critically lead to its non-application in the case of the DAA. *First*, in Zoroastrian, the SCI affirmed the importance of the legislature implementing non-discriminatory law, in terms of religion and sex; however, in the DAA, such discriminatory provisions are imbued in the law itself, through the usage of indirect communal terms such as "improper clustering" and "demographic equilibrium", which aim to foster a homogenous housing system.[104] *Second*, in Zoroastrian, the SCI further stated that if the same impugned action, instead of being carried out by private actors, was carried out by the State, the provisions would be unconstitutional.[105] The DAA, therefore, should be held unconstitutional since the State government is enforcing a law which reads as 'neutral', but is rather leading to religious discrimination. Further, in Zoroastrian, the Court also stated that while the issue of 'ghettos' was one of important concern, it was not in contention in the case.[106] When it comes to the DAA, however, the facts on the ground show the systemic and entrenched nature of communal segregation in Gujarat, which, therefore, cannot be ignored.[107] Lastly, in this case an argument was made that Parsis constitute a 'section of citizens' empowered to conserve and preserve their culture under Article 29 of the

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[99] *See supra* Part III.A on "Article 14".
[100] *See supra* Part II.A on "Background of the Act".
[101] Gautam Bhatia, *Exclusionary Covenants and the Constitution – II: The Zoroastrian Co-op Case*, CONSTITUTIONAL LAW AND PHILOSOPHY, January 12, 2014, available at https://indconlawphil.wordpress.com/2014/01/12/exclusionary-covenants-and-the-constitution-ii-the-zoroastrian-co-op-case/ (Last visited on October 14, 2025); Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban), (2005) 5 SCC 632, ¶2 ('Zoroastrian').
[102] *Id*, ¶14.
[103] *Id*, ¶21.
[104] See *supra* Part III.A on "Article 14".
[105] *Id*.
[106] Zoroastrian, *supra* note 101, ¶28.
[107] Tejani, *supra* note 20.

Constitution, and therefore they have the right to retain autonomy in forming associations (thereby maintaining a 'proper clustering' of Parsis therein), under the DAA this would not be applicable, as Hindus form the majority in Gujarat, and India in general.[108]

Moreover, in the case of *Indian Medical Association* v. *Union of India* ('IMA'), the SCI held that no law, centred around the ascriptive identity of individuals, that is, a marker prescribed by birth and of circumstances generally beyond ones' control, can restrict any private services since, as it would squarely violate Article 15(2) of the Constitution which prohibits citizens from discriminating against others on grounds only of religion, and be subject to any disability, liability, restriction or condition with regard to the same.[109] According to Gautam Bhatia, this case expanded Article 15(2) of the Constitution to include horizontal discrimination on the basis of sex, ethnicity, religion, and other factors, even with respect to property transactions.[110] An analogous argument, therefore, can be posited regarding the DAA, as it is constraining a private contract of transfer of property, relying on grounds based on certain ascriptive identities such as religion. Specifically, under §§3 and 4 of the DAA, once an area is declared as 'disturbed', parties must seek permission from the DC to carry out transfers of property, disclosing their religious identity in the process. As elaborated earlier, this process has enabled denials on communal grounds, leading to indirect discrimination. Thus, injecting State control in otherwise private transactions leads to a violation of Article 15 of the Constitution.

C. ARTICLES 19 AND 21

Under Article 19(1)(e) of the Constitution, all citizens shall have the right to reside and settle in any part of the territory of India.[111] This right is extended to movement between States, and within the State as well.[112] However, the same is not absolute, with Article 19(5) of the Constitution allowing the State to make laws imposing "reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe".[113]

In *N.B. Khare* v. *State of Delhi*, where the petitioner was prohibited from entering Delhi for a period of three months, the SCI analysed the restrictions laid down under Article 19(5) of the Constitution.[114] Here, the Court observed that "the vesting of authority in particular officers to take prompt action under emergent circumstances, entirely on their own responsibility or personal satisfaction, is not necessarily unreasonable".[115] In undertaking an analysis of unconstitutionality under Article 19 of the Constitution, "the whole scheme of the legislation and the circumstances under which the restrictive orders could be mad" needs to be taken into account, and such restrictive orders can only be made when "necessary to prevent such person from acting in any way prejudicial to public safety or maintenance of public order".[116]

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[108] Stephanie Kramer, *Population Growth and Religious Composition*, PEW RESEARCH CENTER, September 21, 2023, available at https://www.pewresearch.org/religion/2021/09/21/population-growth-and-religious-composition/ (Last visited on October 15, 2025); The Constitution of India, 1950, Art. 29.
[109] Indian Medical Association v. Union of India, (2011) 7 SCC 179, ¶¶185, 187, 189.
[110] Gautam Bhatia, THE TRANSFORMATIVE CONSTITUTION: A RADICAL BIOGRAPHY, 129 (Harper Collins India, 2019).
[111] The Constitution of India, 1950, Art. 19(1)(e).
[112] M.P. Jain, *supra* note 53, 1100.
[113] The Constitution of India, 1950, Art. 19(5).
[114] N.B. Khare v. State of Delhi, 1950 SCC 522, ¶¶2, 35.
[115] *Id*., ¶35.
[116] *Id*., ¶¶35, 36.

As explained earlier, while the official objective of the DAA may have been to curb property transactions made without free consent or at an unfair value, the decisions rendered by the DC, complemented by the overall social and political machinery in Gujarat, focus more on the aspect of maintaining heterogeneous communities.[117] This is supported by the fact that some areas have been declared as 'disturbed' and have displayed no evidence of any hostile conditions or breakdown of public order.[118] Additionally, despite a complete cessation or lack of evidence of riots or communal violence for several years, such areas continued to be declared as 'disturbed'.[119] If anything, the 2020 amendment brings to light the true objective of the DAA: to keep Gujarat segregated.

Additionally, the right of residence is inherently connected to the right to life and liberty under Article 21 of the Constitution.[120] This was affirmed by the Supreme Court in *U.P. Avas Evam Vikas Parishad* v. *Friends Co-op. Housing Society Ltd.*, holding that the right to shelter stemmed from the right to residence under Article 19(1)(e) and right to life under Article 21 of the Constitution.[121] This right to shelter was further expanded in *Olga Tellis* v. *Bombay Municipal Corporation* ('Olga Tellis'), where the SCI imposed a positive obligation on the State to consider how governmental policies could deprive the rights of citizens, especially for those in economically and socially marginalised communities.[122] The SCI's recent decision in *In Re: Directions in the matter of demolition of structures* ('Bulldozer Demolitions') echoes this sentiment. This case, heard in the midst of selective demolitions following communal violence, reaffirmed that housing is a necessary aspect of civic life,[123] and denounced *mala fide* targeting of properties,[124] on the basis of factors such as "community guilt" and "collective punishment".[125] Such decisions highlight the fact that the right to residence under Article 19 of the Constitution is not merely linked to physical shelter, but also to dignified living. Crucially, when read with Articles 14 and 15 of the Constitution, the same strengthens the case that discriminatory policies concerning housing, such as those perpetuated by the DAA, violate equality and non-discrimination guarantees by depriving minority communities of shelter on arbitrary and communal grounds.

Discriminatory housing policies, to that end, can violate the right to life by intensifying socioeconomic disparities. The State's purposeful denial of equitable housing opportunities, in the guise of neutral legislation, undermines an individual's capacity to live with dignity, consequently contravening the constitutional guarantee of equality and the safeguarding of fundamental rights. The persistence of such laws, which systematically undermine several fundamental rights, and have not decisively been invalidated (and rather, 'stayed' by Courts), sustains an unconstitutional *status quo*, as will be addressed in the following Part.

IV. STAY' VS. 'STRIKING DOWN': THE STATE OF UNCONSTITUTIONAL AFFAIRS

[117] Gogoi, *supra* note 64.
[118] MS Nileena, *The Gujarat Government is Enforcing Communal Segregation and Criminalising Property Transfers*, THE CARAVAN, August 21, 2019, available at https://caravanmagazine.in/policy/the-gujarat-state-is-enforcing-communal-segregation-and-criminalising-property-transfers (Last visited on October 14, 2025).
[119] Tejani, *supra* note 20.
[120] D.D. Basu, COMMENTARY ON THE CONSTITUTION OF INDIA, Vol. 2, 2822 (Lexis Nexis, 8th ed., 2007).
[121] U.P. Avas Evam Vikas Parishad v. Friends Co-op. Housing Society Ltd, AIR 1996 SC 114, ¶8.
[122] Olga Tellis v. Bombay Municipal Corporation, 1985 SCC (3) 545, ¶53.
[123] In Re: Directions in the matter of demolition of structures, (2024) 11 SC CK 0032, ¶78.
[124] *Id*., ¶82.
[125] *Id*., ¶78.

This Part contrasts the inherent implications and limitations of 'staying' the law (as has been done in the context of the DAA), as opposed to striking it down as unconstitutional. It further tries to bridge a solution by arguing for preventative measures to be undertaken by the Courts, which are necessary to remedy the 'unconstitutional state of affairs' prevalent throughout India, in the context of housing discrimination.

A. THE IMPACT OF 'STAYING' THE LAW

A 'stay' is an action undertaken by the courts to halt legal proceedings with respect to a particular issue.[126] In India, stays are governed under procedural laws such as the Code on Civil Procedure, 1908 ('CPC')[127] and the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS').[128] For instance, §94(c) and Order 39 of the CPC empower the Court to 'stay' orders, proceedings, governmental actions, and so forth, for reasons which include ensuring that justice is done.[129] What is important to note is that the same is considered 'temporary' in nature; therefore, the operation of said provisions in the future cannot be discounted. Striking down provisions, on the other hand, leads to a law being declared illegal and unenforceable.[130] Where provisions pose a danger to the basic fundamental rights of persons, as established earlier, there seems to be no reason to justify staying the law, rather than striking down the same. Even in cases where Courts have stayed the operation of government policies, the same has not stopped them from delving into a *prima facie* determination of constitutional violations therein. For instance, when illegal demolitions were taking place (as examined in Bulldozer Demolitions), the SCI had passed interim orders staying all demolitions within the country.[131] Consequently, Division Benches of the SCI had also observed how such bulldozer demolitions violate the right of shelter guaranteed under Articles 19 and 21 of the Constitution, and encouraged the formation of national guidelines to prevent such unconstitutional acts.[132]

In the case of the DAA, the Gujarat High Court has notably stayed the amendments to the Act and consequently has not engaged in a thoughtful constitutional analysis concerning the same, leaving the door open for its possible importation in other parts of the country. Through this analysis, it is argued that such actions contribute to the 'unconstitutional state of affairs' prevalent with respect to the systemic discrimination of vulnerable communities. To that end, stronger and more proactive judicial intervention is necessitated.

B. THE 'UNCONSTITUTIONAL STATE OF AFFAIRS': THE NEED FOR PREVENTATIVE ACTION IN THE INTERIM

1. EVOLUTION OF THE DOCTRINE

[126] CORNELL LAW SCHOOL LII WEX, *Stay*, available at https://www.law.cornell.edu/wex/stay (Last visited on October 14, 2025).
[127] The Code on Civil Procedure, 1908.
[128] The Bharatiya Nagarik Suraksha Sanhita, 2023.
[129] The Code of Civil Procedure, 1908, §94(c), Or. 39.
[130] MERRIAM-WEBSTER, *Strike Down*, available at https://www.merriam-webster.com/dictionary/strike%20down (Last visited on October 14, 2025).
[131] Jamiat Ulama-I-Hind v. North Delhi Municipal Corpn., (2024) 12 SCC 290, ¶2.
[132] Sushovan Patnaik, *Bulldozer Demolitions Remind of a "lawless, ruthless state of affairs", Declares Supreme Court, as it Issues Pan-India Guidelines*, SUPREME COURT OBSERVER, November 13, 2024, https://www.scobserver.in/journal/bulldozer-demolitions-remind-of-a-lawless-ruthless-state-of-affairs-declares-supreme-court-as-it-issues-pan-india-guidelines/ (Last visited on October 14, 2025).

While the law is effectively in a limbo, the courts should still consider undertaking certain preventative actions, utilising mechanisms such as 'continuing mandamus' therein. This is also supported through doctrines such as the 'unconstitutional state of affairs', introduced in the Constitutional Courts of Colombia, which addresses situations wherein 'structural', rather than individual, rights of persons are being violated.[133] In such cases, it "allows the Constitutional Court to acknowledge the failure of both the Legislative and Executive branches of government to enforce public policies against 'widespread' and 'systemic' violation of fundamental rights" to justify a judicial intervention therein.[134]

This was first applied in a 1997 case related to the enrolment of public-school teachers in a social security program.[135] Here, only about 1/4th of teachers nationwide had access to such programs due to a multitude of reasons, including unequal distribution of funds from the central government. The Constitutional Court of Colombia ('CCC') indicated that the same was "a general problem which affects a substantial number of teachers in the country and the causes of which are related to the disordered and irrational implementation of educational policy", and led to a "manifestly unconstitutional state of affairs".[136] While the Court did not lay down any directions as such and merely notified the government of such a state of affairs, it signified a shift in the role of the judiciary, wherein it identified a widespread policy issue leading to an infringement of the rights of a substantial number of people.[137] Subsequently, in cases such as 'T-068/1998', the CCC continued to expand the application of this doctrine, calling the government to "correct the failures in organization and procedure" of retirement pension distribution, which was to be supervised through a reporting mechanism.[138]

In 'T-153/1998', which was concerned with overcrowding in prisons, the CCC observed that the doctrine was to be utilised when problems "affect a multitude of persons –, and the causes of which are of a structural nature – that is, that given their regularity, they are not originated exclusively in the respondent authority, and therefore, their solution demands the joint action of several agencies".[139] Clarifying the role of judiciary herein, the CCC observed that "the constitutional judge is bound to take up the cause of forgotten minorities, that is, those groups that hardly have any access to political organs". The CCC here ordered the government to come up with a plan to combat overcrowding within three months of the judgment, so as to overcome the unconstitutional state of affairs that had been created therein.

This was a foundational judgment, and formed the basis of the landmark 'T-025/2004' judgment, where the CCC held that 'widespread' and 'systemic' violations can be seen when a "repeated and constant violation of fundamental rights is verified, which affects a multitude of persons, and whose solution requires the intervention of different entities to address problems of a structural nature".[140] The T-025/2004 case also affirmed that the

[133] Gautam Bhatia, *Responding to Illegal Home Demolitions: The Doctrine of An Unconstitutional State of Affairs*, CONSTITUTIONAL LAW AND PHILOSOPHY, June 12, 2022, available at https://indconlawphil.wordpress.com/2022/06/12/responding-to-illegal-home-demolitions-the-doctrine-of-an-unconstitutional-state-of-affairs/ (Last visited on October 14, 2025) ('Bhatia').
[134] *Id*.
[135] Unification Judgment No. 559/97 of the Constitutional Court, November 6, 1997, ¶2 (Constitutional Court of the Republic of Columbia).
[136] *Id*., ¶¶30–33.
[137] Cepeda Espinosa et al., *The Unconstitutional State of Affairs Doctrine* in CONSTITUTIONALISM AND A RIGHT TO EFFECTIVE GOVERNMENT? (Cambridge University Press, 2022).
[138] *Id*.; C.C., Sentencia T-590/98, October 20, 1998, ¶¶6–9, 11 (Constitutional Court of the Republic of Colombia).
[139] C.C., Sentencia T-153/98, April 28, 1998, ¶53 (Constitutional Court of the Republic of Colombia).
[140] Decision T-025 of 2004, January 22, 2004, s.7 (Third Review Chamber, Constitutional Court of the Republic of Colombia) ('T-025').

application of the doctrine was not confined to merely executive action,[141] with factors such as arbitrary procedural measures, as well as a lack of legislative protections also relevant therein.[142]

The criterion to be met here is that a violation must be both widespread and systemic in nature. Gautam Bhatia previously argued that the same be used by the Court in the case of home demolitions, since the pattern of such actions lead to the conclusion that "collective punishment has become an informal part of State policy".[143]

2. APPLICATION OF THE DOCTRINE

In the case of housing discrimination, particularly against religious minorities, multiple reputed national as well as international human rights and legal bodies, such as the Sachar Committee, have clearly established that the same is a common issue nationwide, wherein no effective State action has been taken.[144] These findings are further discussed in Part VI.[145] Scholars such as Rowena Robinson have gone as far as to say that every city in India, which has seen some degree of communal violence, often has within it a mini 'India' (Hindu-dominated areas) and 'Pakistan' (Muslim-dominated areas).[146] Studies conducted over 3000 Indian cities and 100,000 neighbourhoods confirm this pattern of religious residential segregation, in both newer and older cities,[147] from global metropolises to rural and semi-urban India.[148] Such segregation is not only limited to low-income housing, but also to middle and luxury properties.[149] These glaring statistics point to a widespread and systemic issue, affecting a sizable twenty percent of the Indian population, with no significant governmental or judicial intervention.

Given that several years have passed since this decision of the Gujarat High Court, the delay in reaching a substantial solution can end up aiding other States to begin incorporating similar discriminatory mechanisms, as seen in Assam, where inter-faith land transactions were banned for a period of three months to combat 'fraudulent transactions'.[150] While this practice was 'unofficially' followed prior to the official notification to specifically discriminate against Muslims and prevent them from purchasing land in certain areas, its

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[141] María-Dolores Collazos, *Social Transformation in Colombia: Internally Displaced Persons and the Constitutional Court – A Landmark Case*, IACL-IADC BLOG, July 21, 2020, available at https://blog-iacl-aidc.org/constitutional-landmark-judgments-in-central-and-south-america/2020/7/21/vxl7y4pwj6ugz4prke6fcbg3oerm15 (Last visited on October 14, 2025).

[142] T-025, *supra* note 140, p. 7, 35.

[143] Bhatia, *supra* note 133.

[144] JUSTICE RAJINDAR SACHAR, *Social, Economic and Educational Status of the Muslim Community of India: A Report*, 12 (November, 2006).

[145] *See infra* Part VI on "Recommendations of National and International Bodies".

[146] Rowena Robinson, *'Private Acts' and Structural Inequality: Law and Housing Discrimination*, Vol. 18(1), SOCIO L. REV., (2022).

[147] Anjali Adukia et al., *Residential Segregation in Urban India*, CENTER FOR EFFECTIVE GLOBAL ACTION, September 13, 2019, available at https://cega.berkeley.edu/wp-content/uploads/2020/03/Tan_PacDev2020.pdf (Last visited on October 14, 2025).

[148] Naveen Bharathi et al., *Residential Segregation in Urbanising India*, Vol. 59(14), J. OF URBAN AFFAIRS, 83–102, (2022).

[149] Soutik Biswas, *Why Segregated Housing is Thriving in India*, BBC NEWS, December 10, 2014, available at https://www.bbc.com/news/world-asia-india-30204806 (Last visited on October 14, 2025).

[150] Vineet Bhalla & Rokibuz Zaman, *Assam's Land Sale Ban Between Hindus and Muslims May Be Unconstitutional – But it's Happening Anyway*, SCROLL.IN, April 2, 2024, available at https://scroll.in/article/1065849/assams-land-sale-ban-between-hindus-and-muslims-may-be-unconstitutional-but-it-s-happening-anyway (Last visited on October 14, 2025).

legalisation proves the dangers of not striking down harmful legislations such as the DAA,[151] which provide a model for normalisation and replication at a national level.

In 2025, Assam expanded this temporary policy into a Standard Operating Protocol ('SOP'), mandating all inter-religious property transactions to be approved by the DC, as well as Special Branch of the Assam Police, who would examine *first*, whether fraud has occurred; *second*, the source of capital for the transaction; *third*, its effect on "social cohesion" in the area; and *fourth*, its impact on "national security".[152] The government has also announced that an official policy is in the works and will be implemented in 2025. These measures seem to duplicate the provisions of the DAA, utilising vague notions of 'social cohesion' and 'security' to further discourage inter-religious property transactions.

Such anti-minority legislative and policy actions are also not isolated incidents. In states such as Uttar Pradesh and Madhya Pradesh, the growing regulations of inter-faith relationships, also supposedly to prevent "forcible or dishonest" religious conversions, mirror the justifications and objectives of the DAA, albeit in a different context.[153] To that end, we may see many other States attempt to incorporate similar measures as Assam, especially during electoral campaigns, with no legal consequences.

To that effect, the Courts must take 'preventative' action here in striking down the amended provisions and reevaluate whether the DAA in its entirety truly embodies constitutional principles in this day and age. In the Bulldozer Demolitions case, the Court laid down a few guidelines to be followed by the government when carrying out demolitions, including the requirement of a written notice sent fifteen days prior to the same, laying down of the exact nature of violations, authorities involved, document requirements, introduction of a digital portal having such information, and so forth.[154] In a similar vein, the Court could consider laying down general structural guidelines to prevent discrimination under the DAA. These could include the creation of an independent monitoring body or ombudsmen to oversee decisions laid down by the DC, directing the government in Gujarat to submit data on the approvals, rejections, and 'clustering' patterns existent in the State to any problematic identify patterns in property transfers, issuance of clearer guidelines to be followed by the DC when granting no-objection certifications, and so forth. Such instructions could be in the form of a 'continuing mandamus', as introduced in the case of *Vineet Narain* v. *UOI*,[155] which allows for courts to oversee the realisation of socio-economic rights, and intervene when the same is not enforced due to continuing administrative, executive, or legislative inertia.[156]

A mere stay, instead of a definitive repudiation of unconstitutional provisions, fosters an atmosphere of legal ambiguity that advantages those who aim to sustain systemic discrimination. By declining to take decisive action against provisions that jeopardise

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[151] *Id*.

[152] Sukrita Baruah, *Inter-religion Land Transfers in Assam will Require State Government Approval*, THE INDIAN EXPRESS, August 28, 2025, available at https://indianexpress.com/article/india/inter-religion-land-transfers-in-assam-will-require-state-govt-approval-10215294/ (Last visited on October 14, 2025).

[153] EPW ENGAGE, *'Love Jihad' is an Islamophobic Campaign : Why Honour is About Controlling Women's Bodies*, available at https://www.epw.in/engage/article/love-jihad-islamophobic-campaign-whose-honour-is-it-anyway (Last visited on October 14, 2025).

[154] Parul Raghuwanshi, *When Bulldozer Justice Breeds Injustice: Indian Supreme Court Curtails Arbitrary Demolitions*, OXFORD HUMAN RIGHTS HUB, April 24, 2024, available at https://ohrh.law.ox.ac.uk/when-bulldozer-justice-breeds-injustice-indian-supreme-court-curtails-arbitrary-demolitions/ (Last visited on October 14, 2025).

[155] *See* Vineet Narain v. Union of India, (1998) 1 SCC 226.

[156] Mihika Poddar & Bhavya Nahar, *'Continuing Mandamus' – A Judicial Innovation to Bridge the Right Remedy Gap*, Vol. 10(3), NUJS L. REV.,13 (2017).

constitutional values, courts risk legitimising unconstitutional policies through extended inaction, thereby perpetuating systemic prejudice instead of removing it.

This underscores the pressing need to situate the DAA within comparative contexts, where analogous regimes of segregation, such as those in apartheid South Africa and Israel, demonstrate the dangers of letting such laws operate unchecked or in a statutory limbo.

V. 'LAWFUL' GHETTOISATION IN APARTHEID SOUTH AFRICA AND ISRAEL: DRAWING PARALLELS WITH THE GUJARAT MODEL

'Ethnocracy' as a regime type has only proliferated in the last few decades, wherein dominant ethnic groups utilise cracks in existing apparent 'democratic' systems to 'ethnicise' territories and power structures.[157] In the urban setting, ethnocratic control entails forcible land confiscation, formal laws, exclusivist public rhetoric, and covert techniques of control.[158] These pressures are frequently 'muffled' by official and legal understanding of the city as a free, socially mobile space for residence and political participation.[159] As a result, while these forces appear to facilitate integration, in reality, there is a constant erosion of democracy by the divisive implementation of skewed and ambiguous legislation.[160]

Urban segregation and ghettoisation are not new techniques of establishing ethnic control and have been used historically with varying degrees of intensity.[161] While they are often used in combination with other kinds of legislation, once segregation is enforced and ghettos emerge, access to all resources is significantly hindered.[162] This section proceeds to discuss three major examples of urban segregation through pernicious laws in South Africa, Israel and the United States of America. The analysis attempts to draw parallels between the emergence of such laws and their interaction with constitutional safeguards, or lack thereof. The following part does not seek to claim the listed jurisdictions as similar to the Indian context. Arguably, there is no other context globally that is comparable to the aftermath of India's Partition and contemporary Hindutva rise, which is a distinctly unique experience in this sub-continent. Therefore, the analysis does not seek to find direct parallels, but rather to identify faint familiarities and underlying insidious patterns and operations of well-known mass discriminative property legislation that has sought to segregate. This aids in highlighting the danger of allowing legislation like the DAA to operate, even at its present, contained regional scale.

A. SOUTH AFRICA

Urban segregation has been a commonly employed policy to propagate apartheid and the interests of dominant racial, ethnic, or religious groups.[163] This is best illustrated in South African apartheid-enabling legislation throughout the 20th century.[164]

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[157] Oren Yiftachel & Asad Ghanem, *Understanding 'Ethnocratic' Regimes: The Politics of Seizing Contested Territories*, Vol. 23(6), POLIT GEOG., 648 (2004) ('Yiftachel').
[158] James Anderson, *Ethnocracy: Exploring and Extending the Concept*, Vol. 8(3), COSMOP CIV SOC., 14 (2016).
[159] *Id*.
[160] Yiftachel, *supra* note 157.
[161] Sako Musterd, HANDBOOK OF URBAN SEGREGATION, Chapter 1, 3 (Edward Elgar Publishing, 2020).
[162] Alfredo J. Morales et al., *Segregation and Polarization in Urban Areas*, Vol. 6(10), R. SOC. OPEN SCI., 6 (2019).
[163] A.J. Christopher, *Apartheid Planning in South Africa: The Case of Port Elizabeth*, Vol. 153(2), GEOGR. J., 200 (1987).
[164] Margot Strauss, *A Historical Exposition of Spatial Injustice and Segregated Urban Settlement in South Africa*, Vol. 25(2), FUNDAMINA (PRETORIA), 10 (2019).

Initially, such segregation took place through racially restrictive clauses in title deeds, essentially prohibiting manifestly 'coloured' persons from purchasing or even occupying property except in the employment of a White person or 'owner'.[165] A turning point in this regard was the 1913 Native Lands Act, which specifically controlled Black access to land, creating scheduled areas only for Africans, prohibiting them from acquiring land beyond these areas, unless from another African.[166]

Later, such segregation was further statutorily crystallised in various legislations, the most renowned with respect to urban separation being the Group Areas Act, 1950 ('GAA').[167] This Act governed interracial property transactions and occupation all over South Africa, with the aim of eliminating all racially mixed neighbourhoods.[168] A legal framework was created wherein certain neighbourhoods were termed 'controlled areas', and interracial property transactions and occupation changes were subject to a permit in such areas.[169] The GAA was administered by a Land Tenure Advisory Board that would decide whether a certain area qualified as 'group area' or 'controlled area', and residents who were not of the specific group were given one year to vacate the neighbourhood.[170] §2 of the GAA defined 'groups' as White, Native or Coloured.[171] There is a distinct similarity in phraseology with the DAA, in terms of creating specific areas wherein property transactions between the different communities are restricted. While the GAA does this far more explicitly than the DAA, the same can be attributed to the structurally discriminative nature of South Africa's legal culture and constitutional framework at the time.[172]

Until 1961, in addition to the South Africa Act of 1909, the Statute of Westminster and Status of Unions Act, enacted in 1931 and 1934 respectively, applied, which removed many constitutional limitations. In 1960, South Africa's proposed new Constitution was very similar to the South Africa Act, 1909.[173] There was no new '*grundnorm*' introduced by virtue of the 1961 Constitution, no redistribution of power structures and sovereignty was limited to the White minority.[174] Some scholars at the time termed the GAA 'constitutionally illegitimate' since it was not accepted by a large part of the population, thereby denying a right of redress.[175]

However, assessing the GAA against the 1961 Constitution would render it constitutionally legitimate.[176] This is because it was parliamentary, and not constitutional

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[165] Margaret Roberts, *The Ending of Apartheid: Shifting Inequalities in South Africa*, Vol. 79(1), GEOGRAPHY, 60 (1994).
[166] The Native Land Act, 1913, §1 (South Africa).
[167] Johannes Theodorus Schoombee, AN EVALUATION OF ASPECTS OF GROUP AREAS LEGISLATION IN SOUTH AFRICA, 19 (D.Phil., University of Cape Town, 1987).
[168] SOUTH AFRICAN HISTORY ONLINE, *The Group Areas Act of 1950*, available at https://www.sahistory.org.za/article/group-areas-act-1950 (Last visited on January 24, 2025).
[169] *Id*.
[170] *Id*.
[171] The Group Areas Act, 1950, §2 (South Africa).
[172] CONSTITUTION NET, *Constitutional History of South Africa*, available at https://constitutionnet.org/country/south-africa (Last visited on January 24, 2025) ('Constitution Net').
[173] OUR CONSTITUTION, *South Africa's Second Constitution*, available at https://ourconstitution.wethepeoplesa.org/south-africas-second-constitution/ (Last visited on January 24, 2025). ('Our Consitution').
[174] G.E. Devenish, *The Republican Constitution of 1961 Revisited: A Re-Evaluation After Fifty Years*, Vol. 18(1), FUNDAMINA, 6 (2012) ('Devenish').
[175] I. Omar, *The Group Areas Act: a Historical and Legal Review*, DE REBUS, 8 (1989) available at https://journals.co.za/doi/pdf/10.10520/AJA02500329_2637 (Last visited on January 24, 2025) ('Omar').
[176] Banathi Nkehli, *Which South Africa was Better During Apartheid?*, Vol. 13(1), ALTERNATE HORIZONS, 4 (2024).

sovereignty, that governed South Africa at the time.[177] The practical implications of this, and the fact that the Parliament was exclusively a white demographic, meant that virtually any laws favouring Whites could be passed.[178] The only defence available to citizens remained common law principles, and consequently, most sound criticisms of the Act at the time were based on principles of equity, justice, dignity and freedom of the individual.[179] Rebuttals to such criticism often distinguished between the 'principle' of the Act and its 'application'.[180] Defenders of the legislation proclaimed that the Act was a proponent of 'equitable segregation' wherein its stated objective and principle was to eliminate friction by "fair, equitable and humane social separation of the races".[181]

The only possible remedy remained the undercurrents of Roman-Dutch property law — based on the fundamental belief of equal treatment — that a "juridical norm to preserve egalitarian standards, to bind citizens equally, and to define the rights of subjects generally and not for individuals" must be perpetuated in the reading of the law.[182] In fact, South Africa's courts strongly relied on Roman-Dutch property principles wherever possible to ensure equitable outcomes.[183] Naturally, however, these principles are still subject to statute and cannot override it, which explains the excessive proliferation of apartheid legislation in every respect to judicially legitimise discriminatory law and policy.[184]

In the 1990s, South Africa faced mounting domestic and international pressure to dismantle the apartheid system altogether, given its regressive outcomes and backward ideology.[185] That decade saw a massive repeal of apartheid legislation, including the GAA, and a third major constitutional revolution — the Constitution of the Republic of South Africa, 1996 ('1996 Constitution').[186] A key difference in previous constitutions and the 1996 Constitution is its inclusion of a Bill of Rights, wherein laws inconsistent with such rights are invalid. For example, in the 1996 Constitution, §27 prioritises fundamental socioeconomic rights, such as access to water, healthcare, etc; §25 enshrines property rights; §26 propounds a right to adequate housing.[187] Further, individual dignity and integrity have been reiterated multiple times, and South African constitutional jurisprudence clearly leans towards a broad and generous interpretation of 'human dignity' in conjunction with substantive rights.[188] §25(1) of the 1996 Constitution explicitly states that no law may permit 'arbitrary deprivation of property'.[189] §9(4) also recognises indirect discrimination as a violation of the equality principle.[190] The Constitutional Court of South Africa in *First National Bank of SA Ltd t/a Wesbank* v. *Commissioner, South African Revenue Service* ('FNB') discussed 'arbitrary

[177] Our Constitution, *supra* note 173.
[178] Devenish, *supra* note 174.
[179] Rebecca Hamilton, *The Role of Apartheid Legislation in the Property Law of South Africa*, Vol. 10(2), NAT'L BLACK L. J., 170 (1987) ('Hamilton').
[180] Omar, *supra* note 175.
[181] *Id*.
[182] Johan van der Vyver, *Depriving Westminster of its Moral Constraints: A Survey of Constitutional Development in South Africa,* Vol. 20(2), HARV. C.R.-C.L.L. REV., 291 (1985).
[183] Hamilton, *supra* note 179.
[184] *Id*.
[185] Constitution Net, supra note 172.
[186] Mike van Heerden, *The 1996 Constitution of the Republic of South Africa: Ultimately Supreme Without a Number*, Vol. 26(1), POLITEIA, 35 (2007).
[187] The Constitution of the Republic of South Africa, 1996, §§25–27.
[188] Daryl Glaser, *Assessing the Performance of South Africa's Constitution*, CONSTITUTION NET , May 20, 2016, available at https://constitutionnet.org/sites/default/files/chapter_4._democratic_performance.pdf (Last visited on January 25, 2025).
[189] The Constitution of the Republic of South Africa, 1996, §25(1).
[190] *Id*., §9(4).

deprivation' under §25 of the 1996 Constitution as dispossessing an owner of rights, use and benefit of land, with no rationale, reason or principle.[191] Given that the GAA had very openly racist objectives, it would not have survived this provision in theory. Post-apartheid, Whites owned eighty-seven percent of the land despite being ten percent of the population.[192] Scholars have therefore raised issues with the apparent contradiction in the simultaneous effect of §9 and §25 of the 1996 Constitution — on the one hand, equality is guaranteed, and on the other, there is a constitutional protection of apartheid-acquired property, White-owned property.[193] Therefore, the backdrop of the equality in property discourse has been marked with the political tension between land reform and private property ownership.[194]

South African land reform policies are incorporated constitutionally and have kept the apartheid context front and centre, creating legislative frameworks to foster equitable access to land,[195] and a right to redress the effects of past racially discriminatory property laws.[196] In this regard, the court in FNB has clarified that §25 of the 1996 Constitution must be seen as an effort to strike a balance between land reform goals and private property rights.[197] While India may not have a comparable context of mass structural deprivation of properties towards Muslims, there are increasing instances of 'bulldozer justice' and discrimination against Muslims in the realm of housing. Politically charged propagandic terms such as "land *jihad*" coined by right-wing groups make baseless claims that Muslims seek to buy land in predominantly Hindu areas to 'disturb the demographic'.[198] Therefore, it is worth highlighting that certain dangerous similarities in phraseology emerge between the DAA and the GAA. These are not confined to the law, but also to the practice and attitudes of Indian society.

Another provision of the 1996 Constitution that is relevant with regard to the previous discussion on the DAA and the difference between 'principle' and 'application', is §152.[199] According to this section, local governments must sustainably provide communities with fundamental services and a democratic and accountable form of local government.[200] There is an emphasis on stimulating socioeconomic development through day-to-day governance. The objective behind this provision is to lend constitutional recognition to the fact that local governments are an immediate point of contact for the public, with an instant power of steering the actual physical environment of communities.[201] For example, in the apartheid era, local governments were racist, subservient, and illegitimate, which led to horrific

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[191] First National Bank of SA Ltd t/a Wesbank v. Commissioner, South African Revenue Service, 2002 (4) SA 768, ¶¶61, 62 (The Constitutional Court of South Africa) ('FNB').
[192] Jackie Dugard, *Unpacking Section 25: Is South Africa's Property Clause an Obstacle or Engine for Socio-Economic Transformation?*, Vol. 9, CONST. COURT REV., 135 (2019) available at https://www.saflii.org/za/journals/CCR/2019/6.pdf (Last visited on October 14, 2025).
[193] Tanveer Rashid Jeewa & Sfiso Benard Nxumalo, *(In)Equality in Property Ownership: The Rhetoric of Homelessness*, Vol. 45(2), OBITER (2024) available at https://scielo.org.za/pdf/obiter/v45n2/06.pdf (Last visited on January 25, 2025).
[194] Hennie Kotzé & Francois Basson, *Land Reform in South Africa: An Overview*, Vol. 23(4), AFRICA INSIGHT (1993) available at https://journals.co.za/doi/pdf/10.10520/AJA02562804_640 (Last visited on January 25, 2025).
[195] The Constitution of the Republic of South Africa, 1996, §25(5).
[196] *Id*., §25.
[197] FNB, *supra* note 191, ¶50.
[198] Rasiya PA, *In the Name of Name (Identity): Ghettoisation of Muslims in Indian Cities- Inaccessible Rental Apartments*, CENTRE FOR DEVELOPMENT POLICY AND PRACTICE, November 8, 2024, available at https://www.cdpp.co.in/articles/in-the-name-of-name-identity-ghettoisation-of-muslims-in-indian-cities---inaccessible-rental-apartments (Last visited on January 25, 2025).
[199] The Constitution of the Republic of South Africa, 1996, §152.
[200] *Id*.
[201] Daniel Nkosinathi Mlambo & Mashupye H. Maserumule, *Constitutional and Legislative Frameworks for the Local Sphere of Government in South Africa: Analytical and Interpretive Perspective*, Vol. 16(2), INSIGHT ON AFRICA, 27 (2024).

enforcement of apartheid legislation and mass exploitation of the Black community.[202] Therefore, to amend this on-ground reality and erode the racial foundation of an apartheid government, a recognition of the local government's importance and its constitutional accountability with respect to social development was inserted by virtue of §152 of the 1996 Constitution. A parallel can be drawn here with respect to the DAA. As discussed above, a primary factor contributing to the DAA's insidious effects is the excessive discretionary power extended to local government officials, such as the DC. While the DC is not strictly part of 'local governments' such as municipalities and panchayats, the role of such a person involves state government representation and enforcement of law and order at the district level.[203] Therefore, it is argued that such on-ground positions are those that come into contact with public issues, having impacts on the manner in which legislations are executed, therefore lending to the argument of 'principle' versus 'application'. In a Hindu majoritarian state,[204] wherein public posts like these are most often than not occupied by dominant Hindu castes,[205] such discretionary power is especially dangerous and prone to misuse due to the scope for discriminative biases taking effect.

The text and architecture of the 1996 Constitution have led to it being called a 'transformative tool'.[206] Due to the historical context of apartheid, interpretations of rights and resolution of constitutional issues were guided intrinsically by this ideology of 'transformation'.[207] However, the interpretation and implementation of 'transformative constitutionalism' is highly debated. For example, in *Azanian People's Organization (AZAPO)* v. *President of South Africa*, Justice Mahomed approvingly invoked transformation as a constitutional imperative.[208] His interpretation of transformation was necessarily a demanding compromise, privileging reconciliation and a relationship between perpetrator and victim over justice.[209] This interpretation changed in *Bato Star Fisheries* v. *Minister of Environmental Affairs and Tourism*, wherein, rather than looking past history, grappling with it was encouraged.[210] Justice Ngcobo characterised transformation as being largely concerned with "redressing the historical imbalances caused by unfair discrimination".[211] However, as illustrated with these contrasting examples, the principle and application of transformative constitutionalism therefore bear a certain feature of ambiguity and are heavily dependent upon the 'legal culture' prevailing in a certain period. This 'legal culture', coined by Karl Klare, refers to the manner in which professional norms, background moral assumptions and habits

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[202] *Id*.
[203] DISTRICT ADMINISTRATION HYDERABAD, *Collector & District Magistrate Profile*, available at https://ahmedabad.nic.in/collector-district-profile/ (Last visited on January 25, 2025).
[204] Kathleen Cavanaugh, *The Politics of Identity: State-building and Erasure in Modi's 'New' India*, GEORGETOWN JOURNAL OF INTERNATIONAL AFFAIRS, December 2, 2023, available at https://gjia.georgetown.edu/2023/12/02/the-politics-of-identity-state-building-and-erasure-in-modis-new-india/ (Last visited on January 25, 2025).
[205] Kathryn Victoria Bahnken Doner, *Seventy Years Later: Caste in the Indian Bureaucracy*, Vol. 7, SOCIOLOGY BETWEEN THE GAPS: FORGOTTEN AND NEGLECTED TOPICS (2022) available at https://digitalcommons.providence.edu/cgi/viewcontent.cgi?article=1079&context=sbg (Last visited on January 25, 2025).
[206] Mashele Rapatsa, *South Africa's Transformative Constitution: From Civil and Political Rights Doctrines to Socio-Economic Rights Promises*, Vol. 5(2), JURIDICAL TRIBUNE, 209 (2015).
[207] *Id*.
[208] Azanian People's Organization (AZAPO) v. President of South Africa, 1996 (8) BCLR 1015, ¶17 (The Constitutional Court of South Africa).
[209] *Id*., ¶17.
[210] Bato Star Fisheries v. Minister of Environmental Affairs and Tourism, 2004 (4) SA 490, ¶71 (The Constituional Court of Sourth Africa).
[211] *Id*., ¶71.

of judges influence the progressive interpretation of a text.[212] Despite its liberal and egalitarian foundation, South Africa is still not completely free of racial segregation due to various extra-legal forces and the corruption of bodies corporate[213] in charge of housing.[214] This in itself is demonstrative of the need to extend constitutional doctrinal theories to lived social realities of oppressed communities.

Facets of this discourse are important for the Indian context and to determine the unconstitutionality of the DAA. While the relationship between Hindus and Muslims in India is not necessarily comparable to that of the White and non-White communities in an apartheid South Africa, the history of Partition and significant conflict between a dominant Hindu community and the Muslim minority makes some form of 'transformative constitutionalism' relevant. To view discriminative legislation and executive actions against religious minorities in isolation would be 'looking past history' rather than 'grappling with it'. Klare describes South Africa's 1996 as a "postliberal charter" that is essentially focused on egalitarian social transformation.[215]

In India, this 'transformative' nature of constitutionalism can be seen primarily through the liberal interpretation of Article 21 of the Constitution, to include a number of unenumerated rights. In *Naz Foundation* v. *Govt. of NCT of Delhi*, the Delhi High Court relied upon international standards and precedent to declare §377 of the IPC or the criminalisation of homosexual relations as unconstitutional.[216] The main argument of the Union relied upon 'public morality', which the Court rebutted, laying down that public disapproval of acts does not automatically validate restrictions on those acts.[217] The Court firmly asserted the superiority of 'constitutional morality' over such public morality. While this decision was overturned by the Supreme Court in 2013,[218] *Navtej Singh Johar* v. *Union of Indi*a deepened this 'constitutional morality' doctrine, establishing that it goes beyond the mere text of the Constitution and is the 'trickling' of constitutional values.[219] Such constitutional morality must survive majoritarianism, other forms of morality, and must not be equated with any form of 'popular sentiment'. Therefore, it may be said that the concept of South African transformative constitutionalism has been adapted in the Indian context with different vocabulary. The above cases demonstrate the Indian judiciary's development of the doctrine of constitutional morality as a tool to achieve transformative goals by asserting superiority over popular or majoritarian sentiment, to protect the rights of marginalised groups, even when those rights are unpopular.

In the context of housing and socio-economic rights, the Court in *Olga Tellis* v. *Bombay Municipal Corporation* made significant progress by interpreting rights in an interdisciplinary manner to advance the egalitarian goals that principles of transformation and

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[212] Sanele Sibanda, *When Do You Call Time on a Compromise? South Africa's Discourse on Transformation and the Future of Transformative Constitutionalism*, Vol. 24, L., DEMOCR. & DEV., 17 (2020) available at https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072020000100018 (Last visited on October 14, 2025); Karl E. Klare, *Legal Culture and Transformative Constitutionalism*, Vol. 14(1), SOUTH AFRICAN J. ON HUM. RTS., (1998) ('Klare').

[213] Ketsia Lorraine Motlhabane, *Another Form of Group Areas Act in a Democratic South Africa – Complex Homeowner's Dilemma*, Vol. 25(3), MEDITERR. J. SOC. SCI., 78 (2014).

[214] Anne Steinberg, *Law As Social Control in South Africa*, LAW IN CONTEMPORARY SOCIETY, February 16, 2012, available at https://moglen.law.columbia.edu/twiki/bin/view/LawContempSoc/AnneSteinbergFirstPaper (Last visited on January 25, 2025).

[215] Klare, *supra* note 212.

[216] Naz Foundation v. Govt. of NCT of Delhi, 2009 (6) SCC 712.

[217] *Id*., ¶79.

[218] Suresh Kumar Koushal & Anr. v. NAZ Foundation & Ors., (2014) 1 SCC 1, ¶¶54, 55.

[219] Navtej Johar v. Union of India, (2018) 10 SCC 1, ¶111.

morality stand for.[220] The issue in focus was the forced eviction of pavement dwellers without alternative accommodation. The Court held that this action would amount to infringement of the 'right to livelihood' under Article 21 of the Constitution. In doing so, the Court linked Articles 14, 19(1)(e), and 21 of the Constitution to lay down a 'right to shelter'. Thus, an equality-inflected socio-economic dignity right was born.

Today's volatile political context, as detailed above, sets the stage for a dangerous use of legislative tools and policies to divide. While an apartheid-ridden South Africa did not have constitutional safeguards, contemporarily, the Indian Constitution and its jurisprudence are robust and sufficiently dynamic. It is important to utilise these features and the study of comparable divisive policies to preemptively strike down subtle, creeping discriminatory laws.

B. ISRAEL

Israel is one of the six countries in the world that does not have a formalised Constitution, despite being established as a state in 1948.[221] Reasons for this include the clash between secular objectives and *halacha*, or Jewish religious law.[222] Therefore, instead of a single volume text in a formal Constitutional form, the Knesset used 'constitutive' powers to enact the Basic Laws, laying the foundations of the system of government and the rights of the individual.[223] To date, there are eleven basic laws.[224]

The Israeli version of a 'constitutional revolution' came in 1992,[225] when the Knesset enacted the Basic Law: Human Dignity and Freedom and Basic Law: Freedom of Occupation.[226] The former stipulates that no person's life, body and dignity shall be violated[227] by virtue of being human. Clause 3 of this Basic Law also explicitly lays down that "there shall be no violation of the property of a person".[228] The latter lays down that ordinary law can only restrict freedom to engage in an occupation if it is enacted "save by a law that corresponds to the values of the State of Israel, which is designed to serve an appropriate purpose".[229] By this time, the Knesset still had two hostile camps — a secular one in favour of constitutional rights and an orthodox religious one.[230] Due to this, limitation clauses were inserted into both Basic Laws, which stated that the purpose of these laws was to protect a "Jewish and democratic state", thereby embedding a religious objective.[231] The true champion of some form of constitutional value and legal culture was the Israeli judiciary, which also proceeded to widen

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[220] Olga Tellis v. Bombay Municipal Corporation, 1985 SCC (3) 54, ¶32.
[221] Murat Sofuoglu, *Why Israel Does Not Have a Constitution*, TRT WORLD, available at https://www.trtworld.com/magazine/why-israel-does-not-have-a-constitution-18217972 (Last visited on January 25, 2025).
[222] JEWISH VIRTUAL LIBRARY, *Israel Government and Politics: Constitution*, available at https://www.jewishvirtuallibrary.org/constitution-of-israel (Last visited on January 25, 2025).
[223] *Id*.
[224] THE KNESSET, *Basic Laws*, available at https://main.knesset.gov.il/en/activity/pages/basiclaws.aspx (Last visited on January 25, 2025).
[225] JUSTICE AHARON BABAK, Israel Supreme Court, *A Constitutional Revolution: Israel's Basic Laws* (Upon receiving D.Phil., Honoris Causa at University of Haifa, May 18, 1992).
[226] The Basic-Law: Human Dignity and Liberty, 1992 (Israel); The Basic-Law: Freedom of Occupation, 1994 (Israel).
[227] The Basic-Law: Human Dignity and Liberty, 1992, Art. 2 (Israel).
[228] The Basic-Law: Human Dignity and Liberty, 1992, Art. 3 (Israel).
[229] The Basic-Law: Freedom of Occupation, 1994, Art. 4 (Israel).
[230] Hanna Lerner, *Democracy, Constitutionalism, and Identity: The Anomaly of the Israeli Case*, Vol. 11(2), CONSTELLATIONS, 239 (2004).
[231] *Id*.

Basic Laws to include unenumerated rights. Justice Aharon Barak has used the independent clause of the Human Dignity Basic Law ('HDBL') to opine that such rights belong to anyone, regardless of Israeli citizenship, even if they are a resident of an Occupied Territory.[232] The Israeli Supreme Court's bold decision in *Ha'mizrachi Bank* v. *Migdal* clarified that ordinary legislation not in alignment with Basic Laws could be struck down.[233] Further, in *Commitment to Peace and Social Justice* v. *Minister of Finance*, it was held that the right to human dignity is not merely a policy but a guarantee, one that corresponds with a governmental duty to respect it.[234]

In 2018, the passage of the new Basic Law declaring Israel to be the 'Nation State of the Jewish people' solidifies the idea that principles of equality, secularism and democracy are categorically excluded, with the Jewish majority reigning supreme.[235]

The Absentee Property Law, 1950 ('APL') provides for the expropriation of Palestinian refugee property as 'absentee property', which is then transferred to the Custodianship Council for Absentees' Property, depriving Palestinians of their rights to land and property.[236] An 'absentee' is a person residing outside Israel's 1948 borders between 29 November 1947 and the day the emergency is suspended,[237] also applying to cases of relocation within Palestine in the abovementioned duration.[238] The state of emergency in Israel is still in place, making the law effectively perpetual.[239] The law is still being utilised to take Palestinian property in occupied East Jerusalem, through the construction of settlements or 'satellite neighbourhoods'.[240] For example, several Silwan (a holy Palestinian town) properties were deemed 'absentee properties', allowing the Israeli Development Authority to purchase them.[241] These estates were scheduled to be controlled jointly by the Development Authority and the Israel Land Administration, without regard for nationality.[242] However, Israeli authorities used the Jewish National Fund ('JNF') and its subsidiary Himnuta to circumvent this prohibition by transferring properties solely to Jews.[243] Although the JNF cannot purchase land in Palestinian territory, Himnuta is not subject to the same restrictions, despite being virtually entirely

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[232] Aharon Barak, HUMAN DIGNITY: THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT, 280 (*translated by* Daniel Kayros, Cambridge University Press, 2015).

[233] United Mizrahi Bank Ltd. v. Migdal Cooperative Village, 49(4) P.D. 221 (1995) (The Supreme Court of Israel), ¶¶13, 15.

[234] Commitment to Peace and Social Justice Society v. Minister of Finance, HCJ 366/03 (2005) (The Supreme Court of Israel), ¶11.

[235] Suzie Navot, *A New Chapter in Israel's "constitution": Israel as the Nation State of the Jewish People*, VERFASSUNGSBLOG, July 27, 2018, available at https://verfassungsblog.de/a-new-chapter-in-israels-constitution-israel-as-the-nation-state-of-the-jewish-people/ (Last visited on January 25, 2025); Rafsi Azzam Hibatullah Albar et al., *Segregation by Design: An Analysis of Apartheid-Enabling Constitutional Provisions*, Vol. 5(1), CONSTITUTIONALE, 6 (2024).

[236] CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES, *Factsheet: Israel's Apartheid Regime over the Palestinian People*, available at https://cihrs.org/factsheet-israels-apartheid-regime-over-the-palestinian-people/?lang=en (Last visited on January 25, 2025).

[237] NORWEGIAN REFUGEE COUNCIL, *The Absentee Property Law and its Application to East Jerusalem: Legal Memo* (February 2017), available at https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf (Last visited on January 25, 2025) ('NRC').

[238] *Id*.

[239] *Id*.

[240] NRC, *supra* note 237; Oren Yiftachel, *"Creeping Apartheid" in Israel-Palestine*, Vol. 253, MIDDLE EAST REPORT, 11 (2009).

[241] Haim Yacobi, *From 'Ethnocracity' to Urban Apartheid: The Changing Urban Geopolitics of Jerusalem\al-Quds*, Vol. 8(3), COSMOP. CIV. SOC., 105 (2016).

[242] *Id*.

[243] AMNESTY INTERNATIONAL, *Israel's Apartheid Against Palestinians*, 128 (February 2022) available at https://www.amnesty.org/en/documents/mde15/5141/2022/en/ (Last visited on January 25, 2025).

controlled by the JNF.[244] In 2017, the Kaminitz Law was ratified, empowering planning authorities to issue demolition orders and monetary fines for unauthorised construction, endangering tens of thousands of unlicensed homes in Palestinian towns.[245] Even in the absence of demolitions, the law imposes a complete halt to construction in these areas until the final plan is approved — a process that can take years.[246]

Some scholars have nonetheless called this legislation a prima facie "egregious" violation of the HDBL, highlighting that it is highly targeted at Palestinian Arabs, undermining the human dignity of all those who fit the definition of 'absentee' by denying secure property protection on the basis of ethnicity, religion and location during the 1948 Arab Israeli War.[247] Yet, the reason for its constitutional survival is Clause 10 or the 'Validity of Laws' ('VoL') clause in the HDBL, which stipulates that the Basic Law cannot affect the validity of laws passed prior to its commencement.[248] Further, Clause 12 or the limitation clause in the HDBL, enables the proportional restriction of rights during an emergency.[249] In *Hussain* v. *Cohen* ('Hussain'), the Israeli High Court, despite observing the drastic change in circumstances since 1950, could not invalidate the law due to the VoL clause. Instead, they attempted to make the process of declaring a property as 'absentee' more detailed by requiring Attorney General and ministerial committee approval. The dissenting voices in the same case acknowledged the danger that the VoL clause posed to Israel's constitutional discourse, essentially making justice a legislative compromise. They advocated for a more holistic interpretation of the HBDL, using it as a framework to pass judgment on the 'actions' of the law, even if not the law itself, thereby sidestepping the time sensitivity of the HBDL.[250] Therefore, even though the court recognised that the Absentee Property Law is inconsistent with Clause 3 of the HBDL, they were also apprehensive that an invalidation of the law might establish a Palestinian 'right to return', which would have been "national suicide".[251]

Recently, the Israeli Supreme Court's three-judge panel ruled against the JNF in April 2023. Unbeknownst to the Sumreen family, the Custodian of Absentees' Properties designated their residence as "absentee" property in 1987.[252] The Custodian used an affidavit to declare the property's owner, as absent, without any due inquiry, and it was later revealed that Mr Sumreen (property owner) had been in Silwan till his passing.[253] The existence of heirs and whether they might be regarded as absentees was not determined, and the property was moved from the Custodian to the JNF.[254] The government's decision to declare the Sumreen residence absentee property "without any basis in law" was criticised by the Court in its

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[244] Oren Yiftachel, *Theoretical Notes on 'Gray Cities': The Coming of Urban Apartheid?*, Vol. 8(1), PLAN. THEORY, 92 (2009).
[245] Lama Shehadeh, *Urban Planning and the Struggle Against Israel's Spatial Domination*, MERIP, available at https://merip.org/2024/01/urban-planning-and-spatial-domination/ (Last visited on January 25, 2025).
[246] *Id*.
[247] Bria Smith, ISRAEL'S ABSENTEE PROPERTY LAW: WHEN IS DEMOCRATIC FAILURE NECESSARY?, 30 (Senior Theses, Claremont McKenna College, 2017) ('Smith').
[248] The Basic-Law: Human Dignity and Liberty, Art. 10, 1992 (Israel).
[249] The Basic-Law: Human Dignity and Liberty, Art. 12, 1992 (Israel).
[250] Hussain v. Cohen., HCJ 5931/06, ¶2 (The Supreme Court of Israel sitting as a Court of Civil Appeals), opinion of Justice S. Joubran.
[251] *Id*., 43, ¶E; Smith, *supra* note 247.
[252] FOUNDATION FOR MIDDLE EAST PEACE, *Settlement & Annexation Report* (April 7, 2023) available at https://fmep.org/resource/settlement-annexation-report-april-7-2023/#1 (Last visited on January 25, 2025).
[253] J STREET, *J Street Welcomes Israeli Supreme Court's Ruling in Favor of the Sumarin Family*, April 3, 2023, available at https://jstreet.org/press-releases/j-street-welcomes-israeli-supreme-courts-ruling-in-favor-of-the-sumarin-family/ (Last visited on October 14, 2025).
[254] *Id*.

ruling.[255] The case has been viewed as a significant Israeli judicial stance of independence in the face of settler colonial state machinery.[256]

This case is significant in light of Hussain, wherein, despite the significant obstacle of the VoL clause, the court attempts to rein in blatantly discriminative uses of the law, to curb its effects. While the court's approach is technical rather than constitutional and does not even discuss the APL substantively, it is a step forward in the direction of the dissenting judge's vision. However, this is far from sufficient — essentially constraining remedy to those who are able to endure years of litigation. Even when the APL is nowhere close to being structurally challenged judicially, it reveals the insidious patterns in laws that intend to segregate — vague definitions and excessive arbitrary powers to executive bodies — recognised even by Israeli scholars.

While the DAA and APL cannot be placed side-by-side on a spectrum due to the difference in severity in context, a study of the latter highlights familiar legislative tactics. Both statutes demonstrate facially neutral legislation being used to achieve discriminatory spatial control. Much like the APL's definition of 'absentee' that captures even relocation of Palestinians, the DAA's broad definition of 'disturbed areas' enables selective application against Muslim communities through administrative discretion rather than explicit religious targeting. Further, both laws achieve de facto segregation through procedural mechanisms — the APL's Custodianship Council and the DAA's collector permissions. Eventually, the land in the hands of the Council can only be transferred to the Development Authority, which in turn can transfer it to a local authority that has final discretion over what happens to the land. This mechanism enables transfers of such 'absentee' property to Israeli settlers.[257]

The UN and ICJ have also recognised that Israel's housing policies in the occupied territories amount to racial segregation,[258] similar to that in South Africa.[259] This process of 'Judaization' of property took place in 1948 initially, through the mass expropriation of Arab villages.[260] A major tenet of the growing apartheid regime is spatial control, which includes settlement, land, development, municipal boundaries, and movement and development management.[261] As of 2021, Palestinians made up around half of the population in the entire region, although controlling only fifteen per cent of the land.[262] Overall, the process

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[255] Mayan Lawent, *Israel dispatch: Supreme Court rules Against Evicting Arab East Jerusalem Family after 32-Year Property Dispute*, JURIST NEWS, April 12, 2023, available at https://www.jurist.org/news/2023/04/israel-dispatch-supreme-court-rules-against-evicting-arab-east-jerusalem-family-after-32-year-property-dispute/ (Last visited on January 25, 2025).

[256] PEACE NOW, *After 32 Years of Legal Struggles, the Supreme Court has Decided that the Sumarin Family will not be Evicted from their Home in Silwan*, April 11, 2023, available at https://peacenow.org.il/en/after-32-years-of-legal-struggles-the-high-court-of-justice-has-decided-that-the-sumarin-family-will-not-be-evicted-from-their-home-in-silwan#:~:text=In%20my%20opinion%2C%20there%20is%20a%20need,absentee's%20property%2C%20with%20no%20basis%20in%20law (Last visited on January 25, 2025).

[257] NRC, *supra* note 237.

[258] David Keane, *'Racial Segregation and Apartheid' in the ICJ Palestine Advisory Opinion*, EJIL: TALK!, July 31, 2024, available at https://www.ejiltalk.org/racial-segregation-and-apartheid-in-the-icj-palestine-advisory-opinion/ (Last visited on January 25, 2025).

[259] UNITED NATIONS, *Israel's Housing Policies in Occupied Palestinian Territory Amounts to Racial Segregation*, April 27, 2022, available at https://www.un.org/unispal/document/israels-housing-policies-in-occupied-palestinian-territory-amounts-to-racial-segregation-un-experts/ (Last visited on January 25, 2025).

[260] Yiftachel, *supra* note 157.

[261] *Id*.

[262] Oren Yiftachel, *Deepening Apartheid: The Political Geography of Colonizing Israel/Palestine*, Vol. 4, FRONTIERS (2022) available at https://www.frontiersin.org/journals/political-science/articles/10.3389/fpos.2022.981867/full (Last visited on January 25, 2025).

of Judaization has involved violent seizure, discriminatory legislation and institutionalised land grab. Additionally, planning, housing and land institutions are characterised by only negligible representation of the Arab population. The practical ramifications of such processes, in addition to a deep ethnic divide and a weak constitutional foundation, as discussed above, have resulted in Palestinian towns and villages being turned into constellations of ghettos whose dimensions are frozen at the size they were in the late 1960s, while the population has grown fivefold.[263]

C. UNITED STATES OF AMERICA

Segregation of all forms has constituted most of American history.[264] *De jure* segregation existed by virtue of various slave codes, Black codes and later, the Jim Crow laws.[265] Such segregation was outlawed by the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968.[266] *De facto* segregation refers to the legacy of these laws, which results in persisting and socially enforced segregation.[267] This section will focus specifically on Jim Crow Laws and their enablement of urban segregation.

Shortly after the abolishment of the slave codes, the 'Reconstruction Amendments' of the US Constitution came into being, wherein the Thirteenth, Fourteenth and Fifteenth gave citizenship to former slaves, required equal protection of all and gave voting rights to citizens regardless of race or colour.[268] The Jim Crow Era in the United States was characterised by a multiplicity of state and local laws introduced in the Southern States to perpetuate discrimination in public spaces and voting rights, despite the constitutional amendments.[269] The US Constitution had a strong Equal Protection Clause, which should have ideally invalidated most Jim Crow laws.[270] However, they were readily accepted as a means to perpetuate White supremacy in light of persisting intense racial discrimination.[271]

In this manner, case law during the Jim Crow Era also reflected this attitude. For example, the 1896 Supreme Court decision in *Plessy* v. *Ferguson* legitimised these Jim Crow laws, holding that there was no violation of the Fourteenth Amendment as long as facilities for each race were equal, using the "separate but equal" doctrine.[272] Similarly, in *Tucker* v. *Blease*, the defendant challenged a "whites only school",[273] the result of the decision being that each 'White' space must be mirrored by a 'Black' space, essentially reinforcing the 'separate but equal' doctrine in Plessy.

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[263] *Id*.
[264] Jacqueline Jones, *American Apartheid*, DISSENT MAGAZINE, 2017, available at https://www.dissentmagazine.org/article/american-apartheid/ (Last visited on January 25, 2025).
[265] Olivia Ivey, *Segregation and De Facto Segregation*, AMERICAN UNIVERSITY, available at https://subjectguides.library.american.edu/c.php?g=1025915&p=7749743 (Last visited on January 25, 2025) ('Ivey'); Melvin Urofsky, *Jim Crow Law*, Britannica, August 29, 2025, available at https://www.britannica.com/event/Jim-Crow-law (Last visited on October 21, 2025).
[266] The Civil Rights Act, 1964 (U.S.A); The Voting Rights Act, 1965 (U.S.A); The Fair Housing Act, 1968 (U.S.A).
[267] Ivey, *supra* note 265.
[268] The Constitution of the United States, 1789 (Thirteenth Amendment) Act, 1865; The Constitution of the United States, 1789 (Fourteenth Amendment) Act, 1868; The Constitution of the United States, 1789 (Fifteenth Amendment) Act, 1870.
[269] Edwards, *supra* note 1, 146.
[270] THE DECLARATION OF INDEPENDENCE, 1776, ¶2 (U.S.A).
[271] Edwards, *supra* note 1.
[272] Plessy v. Ferguson, 163 U.S. 537 (1896), 540 (The Supreme Court of the United States).
[273] Tucker v. Blease, 97 S.E. 668, (1914), 2 (The Supreme Court of the United States).

Many ordinances, such as the Town of Pendleton Ordinance of 1913, created 'Colour Lines' and defined property rights.[274] The ordinance was divided into procedural and substantive sections, which relied on the division of city blocks as either 'Black' or 'White' depending on which race owned a majority of properties on the block.[275] After such classification, the ordinance further prohibited interracial transfers, use and possession of all forms.[276] In effect, spaces became contingent on the race of prior inhabitants. The 'separate but equal doctrine' was a sham, as in reality, the treatment meted out to Black people was definitely inferior.[277] The US Supreme Court, in *Buchanan* v. *Warley*, addressed government-enabled segregation in urban residential areas by finding that the restrictive covenants in such ordinances were violative of the Fourteenth Amendment's freedom to contract.[278] A similar ruling was passed in *Harmon* v. *Tyler*.[279]

The rejection of the "separate but equal" doctrine by the Supreme Court in *Brown* v. *Board of Education* ('Brown') marked the beginning of the third generation of spatial segregation.[280] After more than half a century of steadily increasing separation rates, the Court concluded in Brown that racially based separation should be categorically constituted discrimination and hence unlawful. The Court held this on the basis of the 'psychological effect' of such a doctrine in public education on Black children. Notably, the Court was unable to address the ground inequality of Black schools having significantly lower resources than White schools and analysed the doctrine assuming equality in spaces. In *Shelley* v. *Kraemer* ('Shelley'), which preceded Brown, the Supreme Court also explicitly denied the ability of state authorities, including courts, to enforce racial segregation.[281] Despite the fact that separation was condemned, and equality was campaigned for constitutionally, private law still legitimised separation.[282] In this sense, the law established a schism between the declaratory and practical dimensions. The public-private dichotomy was established for the first time in Shelley, which permitted racial restrictive covenants but prohibited state enforcement.[283] However, even after the introduction of the Fair Housing Act, which forbade discrimination on a private level, certain exemptions were established in the act itself to allow the preservation and perpetuation of spatial isolation.[284] For example, White majority homeowner associations and limited entry into residential projects by private proprietary mechanisms enabled the preservation of spatial separation between races.[285]

The example of the United States with respect to urban segregation is therefore slightly different. While South Africa and Israel had an absence of constitutional safeguards to tackle skewed property legislations and the actions of local governments at the time of their operation, the US Constitution, despite having a strongly worded equality clause, was interpreted in a bizarre manner to enforce racial segregation under the guise of 'keeping peace' between races. The 'separate but equal' doctrine is a testament to the importance of 'legal

[274] The Pendleton, S.C. Ordinance, 1913, §1 (October 3, 1913) (U.S.A.).
[275] *Id*.
[276] *Id*.
[277] BRITANNICA, *Separate but Equal*, available at https://www.britannica.com/topic/separate-but-equal (Last visited on January 25, 2025).
[278] Buchanan v. Warley, 245 U.S. 60 (1917) (The Supreme Court of the United States), ¶61
[279] Harmon v. Tyler, 273 U.S. 668 (1927) (The Supreme Court of the United States), ¶71
[280] Brown v. Board of Education, 347 U.S. 483 (1954), 495 (The Supreme Court of the United States).
[281] Shelley v. Kraemer, 334 U.S. 1 (1948) (The Supreme Court of the United States), ¶17
[282] Shai Stern, *"Separate, Therefore Equal": American Spatial Segregation from Jim Crow to Kiryas Joel*, Vol. 7(1), RSF JOURNAL OF THE SOCIAL SCIENCES, 80 (2021) ('Stern').
[283] *Id*.
[284] Robert G. Schwemm, *Discriminatory Effect and Fair Housing Act*, Vol. 54, NOTRE DAME L. REV., 199 (1978).
[285] Stern, *supra* note 282.

culture' and how such culture may influence the way in which constitutional safeguards are applied in potentially discriminatory manners. The equality clause's guarantee that no state shall 'deny to any person within its jurisdiction the equal protection of the laws' mirrors Article 14 of the Constitution's prohibition against denial of 'equality before the law or the equal protection of the laws'. Yet both constitutional systems demonstrate enablement of systematic discrimination — just as the 'separate but equal' doctrine circumvented the Fourteenth Amendment's equality guarantees, Gujarat's DAA employs seemingly neutral language about 'public order' and 'preventing distress sales' while effectively segregating communities.

India's recent Waqf (Amendment) Act, 2025, substantially increases government intervention in the determination of waqf property by mandating documentary proof over disputed land, in which the government has a final say. Further, the Amendment allows non-Muslims to be part of waqf boards. It has been argued that this Act is in violation of Article 26 of the Constitution, which guarantees religious denominations freedom over their own affairs. More importantly, it was also argued that §3C of this Act was "per se unconstitutional" since it gave a revenue officer wide powers in declaring a property as government and removing its waqf status, without fair adjudication.[286] This is similar to the pattern of problems in discriminatory laws that are facially neutral, wherein wide powers are given to local authorities, with vague definitions and provisions regarding 'demographics' at their disposal. In addition to legislation such as the DAA, such other instances of housing-related discrimination against Muslims reveal a larger pattern of ghettoisation, wherein access to healthcare, sanitation and education are affected by such spatial segregation.[287]

The US experience of ghettoisation, much like the other jurisdictions discussed, reveals how constitutional interpretation can either reinforce or dismantle discriminatory practices. While South Africa and Israel operated under different constitutional frameworks, the United States demonstrates that even strong constitutional protections require vigilant judicial interpretation to maintain their substantive meaning. Such cross-analysis helps identify salient features of subtle, legislatively empowered spatial segregation and the ways in which the evolution of judicial interpretation has either enabled or prevented ghettoisation of minorities. Thus, important lessons from historical instances of segregation caution against formalistic interpretations that focus only on text and intention, instead advocating for an on-the-ground, effects-based analysis.

VI. RECOMMENDATIONS OF NATIONAL AND INTERNATIONAL BODIES

Noting the serious and institutionalised issue of housing discrimination and unfair treatment according to minorities therein, there have been multiple attempts to assess, empirically and otherwise, the state of affairs in India, and provide solutions to the same. These include the Sachar Committee Report (2006), Report of the Expert Group on Equal

[286] Manasi Shah, *Constitutionality of Waqf Amendment Act | Day 1: 'Many Muslims want private charity, not Waqf Board', says Union*, SUPREME COURT OBSERVER, April 16, 2025, available at https://www.scobserver.in/reports/constitutionality-of-waqf-amendment-act-day-1-many-muslims-want-private-charity-not-waqf-board-says-union/ (Last visited on January 25, 2025).

[287] Kavitha Iyer, *Segregated & Unequal: New Research Reveals How Public Services Are Restricted, Denied To Muslims, Dalits In Ghettoised Localities*, ARTICLE 14, August 4, 2023, available at https://article-14.com/post/segregated-unequal-new-research-reveals-how-public-services-are-restricted-denied-to-muslims-dalits-in-ghettoised-localities--64cc7264b3852 (Last visited on January 25, 2025); Raphael Susewind, *Muslims in Indian Cities: Degrees of Segregation and the Elusive Ghetto*, Vol. 49(6), EPA: ECONOMIC AND SPACE (2017) available at https://journals.sagepub.com/doi/10.1177/0308518X17696071 (Last visited on January 25, 2025).

Opportunity Commission (2008), and the Report of the United Nations ('UN') Special Rapporteur on adequate housing.

The Sachar Committee was set up in 2005 to comprehensively analyse the state of Muslims in India.[288] Their Report revealed that Indian Muslims were placed at a significant disadvantage, politically, economically, and socially.[289] With respect to ghettoisation, the Report observed that acquiring or leasing property in one's favoured regions was becoming very challenging for Muslims.[290] In addition to the hesitance of property owners to rent or sell to Muslims, numerous housing societies in "non-Muslim" areas actively forbid or deter Muslims from residing there.[291] Since the Report, the conditions of Muslims in said categories have actually worsened.[292]

The Sachar Committee Report recommended the establishment of an Equal Opportunity Commission ('EOC'), whose mandate would include investigating "the grievances of deprived groups" and evaluating "mechanisms for affirmative action, following an evidence-based approach".[293] The EOC, modelled on the basis of similar commissions established worldwide, would be empowered with the powers of a civil court for the purposes of investigation and inquiries, without having the ability to penalise persons.[294] The EOCs mandate, with respect to tacking segregation, can be derived from its mandate to ensure fair access to housing.[295] The Draft Equal Opportunity Commission Act, 2008 ('Draft Bill'), formulated by the Expert Group on the EOC, had envisioned the powers and jurisdiction of the EOC to include investigation of "specific complaints of denial of equal opportunity", intervention and support in judicial proceedings involving discrimination, conducting of an 'Equal Opportunity Audit' for both private and public actors, providing reports to the Government (on request or *suo moto*) assessing existing and future enactments, as well as recommending legislative measures to promote equal opportunity, among other functions.[296] Under this draft, while the EOC would have the power to "direct the appropriate Government or authority to take action, including prosecutions or the imposition of civil sanctions or penalties on persons in authority found to be acting in a manner prejudicial to the orders and directives made by the Commission", the same is not mandatory in nature.[297] Despite the lack of stronger penal powers, its quasi-executive role and ability to issue persuasive recommendations can provide a crucial institutional mechanism to combat institutional segregation.

The Draft Bill proposes for their appointment to be made by the President, on the recommendations of a committee comprising the Prime Minister, Speaker of the Lok Sabha, Minister in-charge of the Ministry of Minority Affairs, Leader of the Opposition in both the Lok Sabha and Rajya Sabha, Deputy Chairman of the Rajya Sabha, and a nominee of the Chief

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[288] Christophe Jaffrelot & A. Kalaiyarasan, MARGINALITIES AND MOBILITIES AMONGST INDIA'S MUSLIMS ELUSIVE CITIZENSHIP, Chapter 1, 19–41 (Tanweer Fazal et al., Routledge, 1st edn., 2024) ('Jaffrelot').
[289] *Id*.
[290] SACHAR COMMITTEE REPORT, *Social, Economic and Educational Status of the Muslim Community of India*, 12 (November 30, 2006).
[291] *Id*., 12.
[292] Jaffrelot, *supra* note 288.
[293] EXPERT GROUP TO EXAMINE AND DETERMINE THE STRUCTURE AND FUNCTIONS OF EQUAL OPPORTUNITY COMMISSION, *Equal Opportunity Commission: What, Why and How?* (February 20, 2008), Executive Summary (x.), available at https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1658385481.pdf (Last visited on January 25, 2025) ('Equal Opportunity').
[294] *Id*.
[295] *Id*., 31, 32.
[296] Draft Equal Opportunity Commission Act, 2008, §23.
[297] Draft Equal Opportunity Commission Act, 2008, §23.

Justice of India. Within this group, at least two persons should be women, and at least two full-time members should have an expertise in "social sciences research and public policy" and "constitutional law and governance" respectively. The Draft Bill mandates that the Chairman be an "eminent person distinguished in public service and possessing a good understanding of the secular and egalitarian values of the Constitution" and sets an age limit of not more than sixty-five years for all members of the EOC. The Bill also lays down the situations wherein members can be removed from the EOC, such as in the cases of undischarged insolvency, conviction in a criminal case, and incapability of being a member.

The Expert Group had proposed that the Draft Bill be presented before Parliament for the establishment of the said commission.[298] However, this proposal has remained dormant since 2008, ignored by both the outgoing United Progressive Alliance government and the BJP-led government, which came into power in 2014.[299] Nonetheless, the EOC is an innovative and viable, as seen in practice worldwide, mechanism for addressing the various issues plaguing minority and other vulnerable communities in India, and could be part of a robust framework to reduce ghettoisation through the issuance of codes regulating transfer of property, which prohibit the use of religion or caste as a factor in rejecting applications for the same. For instance, these codes, as envisioned under the Draft Bill, could recommend the elimination of disclosure of religious status in administrative processes (as is followed in the case of the DAA), as well as explicit clauses to be incorporated within existing laws governing property that prohibit discrimination on the basis of religion, caste, community affiliation and so forth. Compliance with the same could be monitored through reporting mechanisms, reviews, and other 'naming and shaming' mechanisms. While the Expert Group has seen the role of the EOC to be more directive in nature, the adoption of such guidelines by the SCI or HC (possibly through mechanisms discussed previously in Part IV) could see the same becoming obligatory on public and private actors.

Building on this, in the international sphere, Resolution 31/9, discussing the right of adequate housing as a component of the right to an adequate standard of living and non-discrimination therein, was passed by the UN Human Rights Council in 2016.[300] Pursuant to the same, the Special Rapporteur on adequate housing released their report ('Report') specifically addressing the housing discrimination faced by vulnerable communities in India, including women, religious and caste minorities, homeless persons, and so forth.[301] The Report affirmed prior studies conducted in the capital region showing that discrimination against Muslims hampered their access to housing, with private landlords, developers, and brokers frequently denying rental opportunities to them or establishing inequitable terms for them.[302] Specifically, it was noted that in certain regions of the country, Muslims have felt necessitated to move out of their neighbourhoods and relocate to areas inhabited by other Muslims,

[298] Equal Opportunity, *supra* note 293.
[299] Ajay K. Mehra, *Why Equal Opportunity Commission Recommendations and Diversity Index Require Policy Interventions*, THE WIRE, May 14, 2024, available at https://thewire.in/rights/why-equal-opportunity-commission-recommendations-and-diversity-index-require-policy-interventions (Last visited on January 25, 2025).
[300] U.N. Human Rights Council, *Adequate Housing as a Component of the Right to an Adequate Standard of Living, and the Right to Non-Discrimination in this Context*, 1, U.N. Doc. A/HRC/RES/31/9 (April 19, 2016).
[301] Special Rapporteur on Adequate Housing, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, on her Mission to India*, A/HRC/34/51/Add.1 (January 10, 2017) ('Special Rapporteur').
[302] Sukhadeo Thorat et al., *Urban Rental Housing Market: Caste and Religion Matters in Access*, Vol. 50(26), E. P. W., 47 (2015); *Id*., Special Rapporteur.

frequently in informal settlements, characterised by harsh conditions due to overpopulation, lack of sanitation facilities, shortages of electricity, and insufficient waste collection.[303]

Accordingly, the Report, in its recommendations pointed to the necessity of comprehensive, ambitious, and cohesive domestic legislative framework to tackle housing discrimination, grounded in human rights.[304] The need for a central legislation is further underscored by the recent notifications and actions being undertaken in Assam, indicating the growing possibility of further legalised segregation using the Gujarat model as inspiration in other States as well.

The Report also referred to measures such as the 'New Urban Agenda', adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) and subsequently endorsed by the UN General Assembly.[305] The Report emphasised the role of States in combating discrimination based on religion, gender, nationality, etc., in the process of city and town planning through legislative measures, guaranteeing a decent quality of life for all persons.[306]

VII. CONCLUSION

This Paper has undertaken an extensive analysis of the background of the DAA and the 2020 Amendment, within the social and political context of Gujarat. Further, it has tested the provisions of the DAA against the provisions of the Indian Constitution, namely Articles 14, 15, 19, and 21, establishing the same to be squarely unconstitutional. In doing so, it has explored similar restrictive fact situations within the cases and argued why the principles within these cases would point to the unconstitutionality of the DAA. It additionally argues for the specific striking down of said provisions to address the unconstitutional state of affairs in India faced by religious minorities in the context of housing.

Through a cross-jurisdictional analysis, it looks to the systems of institutional urban ethnocratic planning in countries such as South Africa, Israel, and the United States, and the DAA enforced by the ruling BJP, bringing into light the analogous impacts of segregation and demographic control enforced by such regimes. Lastly, it has also observed the recommendations made by national and international bodies in this regard and argues for a specific central legislation that focuses on the prevention of discrimination in housing and outlawing of mechanisms of 'legalised segregation' such as the DAA.

Beyond this critique, this Paper also proposes concrete legislative mechanisms to combat ghettoisation. These include the formation of an EOC, with clear statutory powers of investigation, jurisdiction, audit and compliance mechanisms, and issuance of codes of good practice to be followed nationwide. The Paper argues for the incorporation of such mechanisms through the Court as well, through doctrines such as "state of unconstitutional affairs" and continuing mandamus as structural remedies therein. These approaches aim not only to dismantle segregation but also to provide a viable institutional mechanism to safeguard it.

[303] *Id*., Special Rapporteur.
[304] *Id*.
[305] *Id*., 7; *See* New Urban Agenda, G.A. Res. 71/256, U.N. Doc. A/RES/71/256 (January 25, 2017).
[306] *Id*., Special Rapporteur, ¶¶82, 84.