

**A CRITICAL STUDY OF URBAN LAND OWNERSHIP BY AN
INDIVIDUAL VIS-A-VIS INSTITUTIONAL (OR COMMUNITY)
BASED OWNERSHIP - THE IMPACT OF TYPE OF OWNERSHIP
ON SPATIAL GROWTH, EFFICIENCY AND EQUITY: A CASE
STUDY OF AHMEDABAD, INDIA**

Vrajlal Sapovadia
Professor
B.K. School of Business Management,
Gujarat University, India
prof_sapovadia@yahoo.co.in

Summary: The study of Ahmedabad land ownership issues by individual vis-à-vis community organization reflects importance of various community organizations in development of city. Half of the property is owned by community organization, the spatial growth of the city is to the extent contribution of these organizations. The organizations are formal institutes and regulated by government agencies, managed by community, expenses are shared by large number of members; it offers affordable housing with remarkable efficiency. The legal compliance ensures rights of the members in long run and smooth administration for the government. Cooperatives and NTC is an instrument for designed growth as pooling and allotment of land to community organization ensures sustainable urban development. Due to its formal structure and regulation, it allows access of credit on the property and ensures recovery of loan extended on such property.

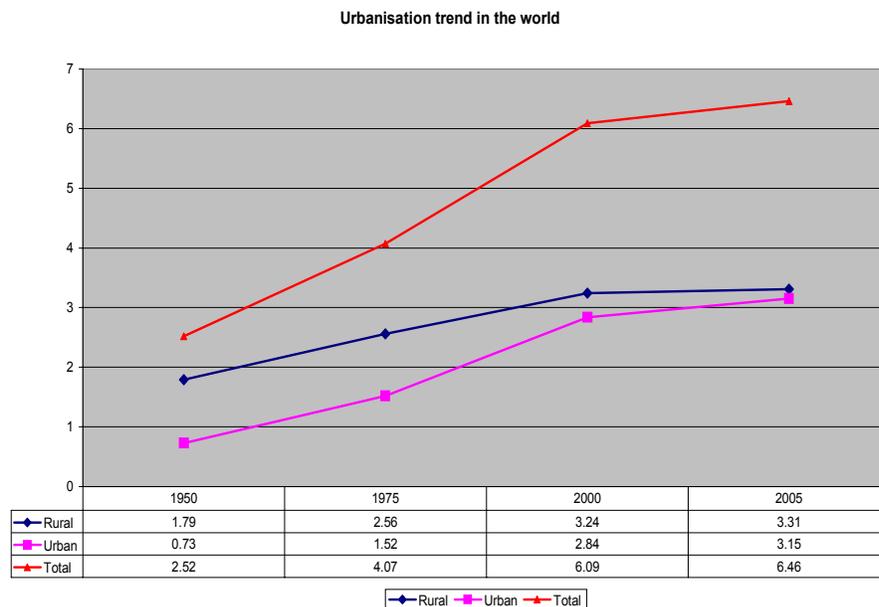
Key Words: Housing Cooperatives, NTC, Land Ownership, Ahmedabad, India

A CRITICAL STUDY OF URBAN LAND OWNERSHIP BY AN INDIVIDUAL VIS-A-VIS INSTITUTIONAL (OR COMMUNITY) BASED OWNERSHIP - THE IMPACT OF TYPE OF OWNERSHIP ON SPATIAL GROWTH, EFFICIENCY AND EQUITY: A CASE STUDY OF AHMEDABAD, INDIA

I. PROLOGUE

There is a global trend of people moving from village to town and cities; the craze of urbanization is equally pervasive in India, which is undergoing a radical makeover. According to projections by the census office, large chunks of country are going to be urbanized over the next two decades. By 2026, more than half the populations of states like Gujarat would be living in urban areas. India has entered the 21st Century with urban population of 285 million, which is even greater than the total population of United States of America. The million plus cities have also grown to substantially in terms of number (1827 to 5161 in 20th century), size and area. This has meant an exodus from villages to cities. The urbanization scenario reveal that the percentage of urban population which was about 20% in 1971 may increase to about 41 to 45% by 2021. In absolute terms it may increase to 550 million by 2021. Ahmedabad is one of 35 million plus city, which is ranked seventh largest city in India. (Ann.A)

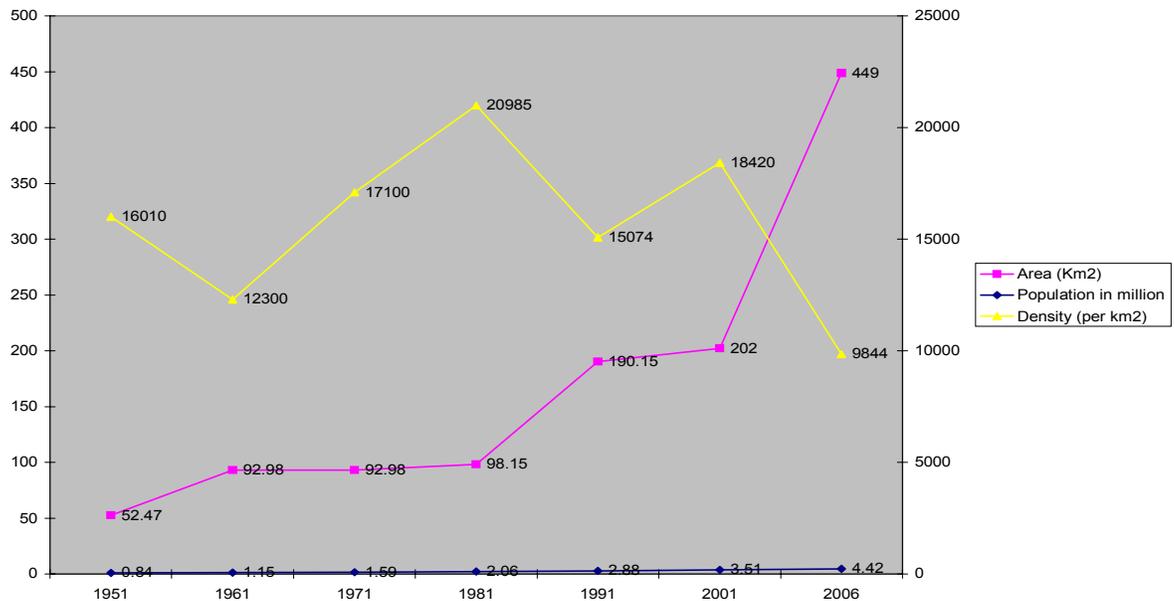
Figure : 1 Urbanisation trend in the world



Source: <http://www.un.org/esa/population/publications/WUP2005>

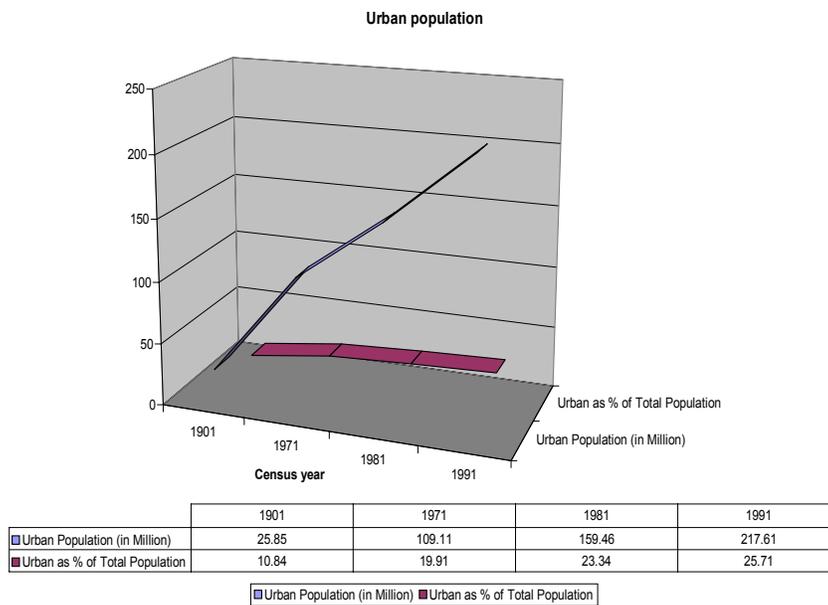
It is evident that urban population increased at more pace than rural & total population. The global analogy (Ann. A) applies to India, Gujarat & Ahmedabad equally. Population of Ahmedabad increased from 0.84 (1951) to 4.42 million (2006), while the area of city limit was increased from 52 Km² to 449 Km². (Ann.C)

Figure : 2 Historical population, area & density in Ahmedabad



Source: AMC & Planning Commission of India & Department of Census, India

Figure : 3 Urban Population Trend



Source: <http://www.un.org/esa/population/publications/WUP2005>

The downside, however is matter of twinge; the unplanned growth, black marketing in land prices, exploiting poor & nave citizens by selling land without marketable title, lack of infrastructure to list a few. Many of the towns are characterized by a shocking absence of civic amenities and planning. If India's cities are to thrive, there must be some serious thought given to urban planning and civic infrastructure. This must also include ways of preserving and fostering ties of community and tradition within cities. Hence the city planners should take into consideration availability of land to community on which socio-economic development take place.

II. URBANIZATION, URBAN GOVERNANCE & ROLE OF INSTITUTIONS

The total population of the country has increased from 361 million in 1951 to 844 million by 1991, whereas, urban population increased from 62 million to 217 million, while in the same period, the number of urban agglomerations has increased from 2843 to 3768. This indicates that the increase in urban population was 250% whereas increase in urban agglomerations was only 32%. Urban Governance encompasses institutional strengthening and capability building, decentralization, community participation, and involvement of the private sector.

Community participation has increased in urban development through the involvement of non-government organizations (NGOs), cooperative societies, Non Trading Corporations, business associations, associations of slum dwellers, and other community-based organizations. Such groups may become involved in local planning initiatives, taking responsibility for infrastructure improvement and maintenance, collective ownership of land and development of housing and allotting units to their members, obtaining innovative means of credit, participating in the provision of basic services and providing stable socio-economic means. Land management is vital issue in urban governance. Central & State Governments through implementing policies provided framework that encouraged participation of private & non-governmental entities in various urban governance issues.

III. POLICY EMPHASIZE BY PLANNING COMMISSION

The government of India considers urbanization as driver of economic growth and visualized the trend thereby, Planning Commission in last half century made foundation of strong housing in urban area by designing policies and encouraging private and public institutional base. Housing Cooperatives has been given emphasize for achieving the targets set in each plan lay out. The tenth plan has given housing cooperatives a target of construction of 100,000 houses each year under the 2 million housing program for the economically weaker section. The cooperatives have been able to construct a total of 292000 units in the 1998-2001. The cooperative housing movement has made significant progress in India over the years and the housing co-operatives have come to be acknowledged as being an effective organizational form entrusted with the responsibility of supply, maintenance and management of housing stock in the country at affordable cost.

Planning Commission laid down policies and given emphasize to the issues more critical at particular point of time in country's socio-economic history. The following table narrate policy emphasize and housing & urban outlay in each plan:

Table no.: 1 Historical Emphasize by Planning Commission

Five Year Plan	Years covered	Emphasize
First	1951-56	Institution building and on construction of houses for Government employees and weaker sections
Second	1956-61	The Industrial Housing Scheme was widened to cover all workers. Three new schemes were introduced, namely, Rural Housing, Slum Clearance and Sweepers Housing
Third	1961-66	Co-ordination of efforts of all agencies and orienting the programs to the needs of the Low Income Groups
Fourth	1969-74	Stressed the need to prevent further growth of population in large cities and need for decongestion of population
Fifth	1974-79	Reiterated the policies of the preceding Plans to promote smaller towns in new urban centers, in order to ease the increasing pressure on urbanization, augmenting civic services in urban areas with regional approach
Annual Plan	1977-80	N/A
Sixth	1980-85	Integrated provision of services along with shelter, particularly for the poor
Seventh	1985-90	Stressed on the need to entrust major responsibility of housing construction on the private sector, public sector was assigned: acquisition and development of land
Annual Plan	1990-92	N/A
Eighth	1992-97	First time explicitly recognized the role and importance of urban sector for the national economy
Ninth	1997-2002	Focus changed to lessen government role in financing
Tenth	2002-07	Capacity building by public private partnership

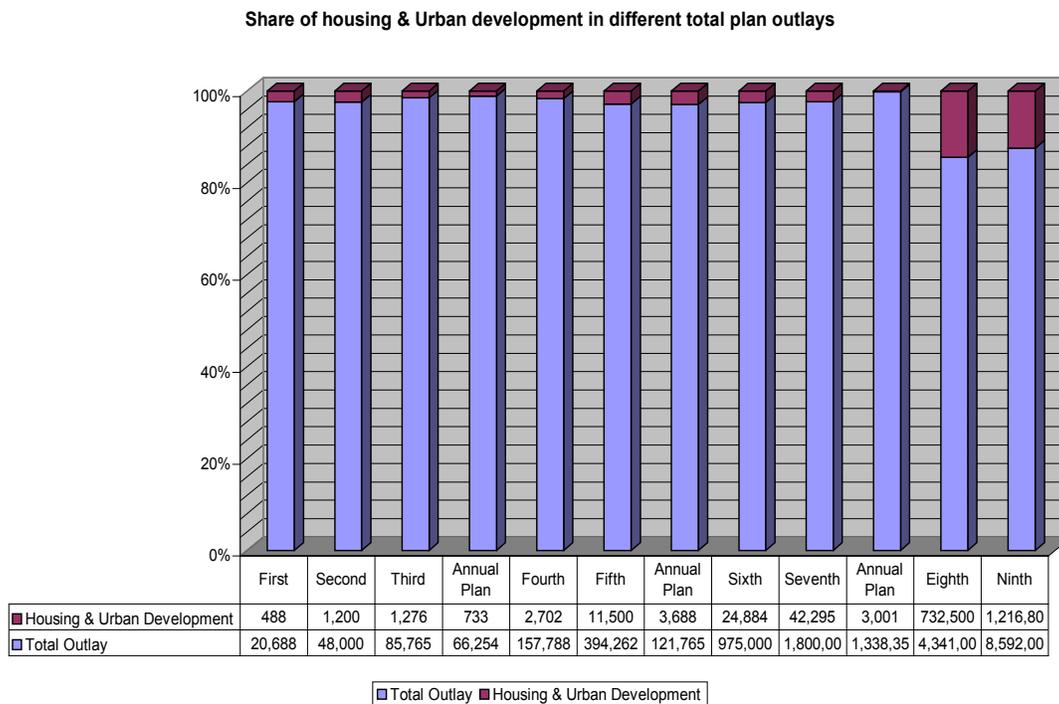
Source: Planning Commission, India

*Table-2: Plan Outlay in Housing and Urban Development
 (Rs. In million)*

Five Year Plan	Years covered	Total Outlay	Housing & Urban Development	% share in the total
First	1951-56	20688	488	2.1
Second	1956-61	48000	1200	2.5
Third	1961-66	85765	1276	1.5
Annual Plan	1966-69	66254	733	1.1
Fourth	1969-74	157788	2702	1.7
Fifth	1974-79	394262	11500	2.9
Annual Plan	1977-80	121765	3688	3.0
Sixth	1980-85	975000	24884	2.6
Seventh	1985-90	1800000	42295	2.3
Annual Plan	1990-92	1338350	3001	2.2
Eighth	1992-97	4341000	732500	2.4
Ninth	1997-02	8592000	1216800	N/A
Tenth	2002-07	15923000	N/A	N/A

Source: Planning Commission, India

Figure: 4 Share of housing & urban development in plan outlays



Source: Planning Commission, India

IV. LAND & URBANIZATION

The government as regulator enacted and implemented series of land and related regulations. As a welfare state and under constitutional obligations to implement directive principles, government enacted another set of legislations for social justice. As a popular measure and political compulsion or in haste of speedy industrial & hence urban development few more legislations were enacted in late 20th century. It includes legislations as old as enacted in 19th century legislation like Bombay Land Revenue Code 1879, Land Acquisition Act, 1894 while series of other legislations enacted thereafter like, Land Tenure Abolition Laws, Bombay Tenant & Agriculture Land Act 1948, Gujarat Land Revenue Rules 1972, Urban Land Ceiling Act 1976 (which was repealed in 1998), Agriculture Land Ceiling Act 1960, Town Planning and Urban Development Act, 1976, Gujarat Infrastructure Development Act, 1999 Gujarat. There is web of Union & State laws, local authority regulations, various agencies & institutions created to monitor, regulate and facilitate land management & reforms. The judicial system is working at a snail pace and millions of court cases about disputes between citizens and between citizen & government are pending.

The careful review and reforms of the regulations, which promote community based land ownership, result in a lower cost for urban development and for housing. An additional benefit will be a more efficient spatial organization for cities. Specifically, the expected outcome of

regulatory reform that encourage community participation in urban management can be summarized as follows:

1. More compact cities, more efficient land uses. No enclaves of under use or unused land; more efficient use of existing primary infrastructure.
2. Increase share of the housing stock supplied by unsubsidized formal private sector developers, decrease in illegal subdivisions and slum areas.
3. Generally lower land prices but higher prices in some prime commercial and business areas
4. Participation of users (community organizations) in framing policy will enhance compliance
5. Management of community properties by local leaders enhance efficiency and relieve government burdens, easy to fix accountability in decentralized working & hence benefits of decentralization in general ensure equitable growth of cities

In India, the combined effect of multiple layers of poorly conceived central, state and municipal regulations contribute to an artificial urban land shortage. As a result urban land prices are abnormally high in relation to India's household income, and households consume less floor space than they could afford if the regulatory environment were reformed. The repeal of the Urban Land (Ceiling and Regulation) Act, 1976 has been a significant step towards reform in the urban land market. Following the repeal of the central legislation, a number of state governments have also repealed the state-level law. However, the Act still exists in some states, while several other state laws like the Land Revenue Act, Land Reforms Act, Stamp Duty Act, and Urban Development Authorities Acts/Town Planning Acts continue to hamper the availability of land for housing and other construction, pushing up land prices. There is a need to take measures to ease the availability of land so that growth can take place through increased construction and housing activity, and land prices can be brought down to moderate levels making affordable shelter available to the problems, working together, have made it impossible for land to be procured for development in city centres, barring in small quantities. In prime areas, much of the land is used well below its potential.

In addition, some regulations have a negative impact on the spatial structure of cities. By unreasonably reducing the amount of floor space that can be built in centrally located areas, and by making land recycling difficult, some regulations tend to "push" urban development toward the periphery. As a result, commuting trips become longer, public transport become difficult to operate and urban infrastructure has to be extended further than what would have been the case if land supply had been unconstrained. The Town Planning Act requires the Authority to revise its Development Plan at least once in ten years. The limit of AMC was extended thrice in last two decades; it was extended towards east by inclusion of 92.65 Km² in 1987 and twice in 2006 towards west. The area of AUDA was also changed due to inclusion of few area of AUDA into AMC and new area was covered by AUDA. In 1991, Ahmedabad city had population of 2876710 persons living within 190.84 Km². This peripheral growth speaks adequately for the city's need to enlarge. The proposed development plan (1294.65 Km²) is based on existing population, development trend, existing land use, economic structure, communication, potentiality of the area under State, Central, Railway, River, Canal and existing road study by

ISRO. The overall land use break-up under AMC (Ahmedabad Municipal Corporation) & AUC (Ahmedabad Urban Complex) is depicted below:

Table no. 3: Utility Land Break up in Ahmedabad

Sr.No	Particulars	Area in Hectare (AMC)	Area in Hectare (AUC)
1	Residential, Roads (old)	8340.22	9938.00
2	Residential/ Walled city, Villages	645.56	4624.92
3	Commercial	263.06	1071.92
4	Industrial – General & Special	2006.51 + 786.72	987.58
5	Public Activity Area	1643.60	552.00
6	Reservation/ Public & Semi Public	1955.37	243.00
7	Education	387.30	
8	Roads & Railway/ Recreational	2117.67	6300.00
9	Water Bodies/ Treatment Plans	937.97	745.16
10	High Flood Hazards		524.00
11	Agriculture		3800.42
	Total Area	19084.00	28787.00

Figure no. 5

Land distribution in Ahmedabad-The overall land use break-up under AUC (Ahmedabad Urban Complex, excluding AMC limit) by 2011 is as under:

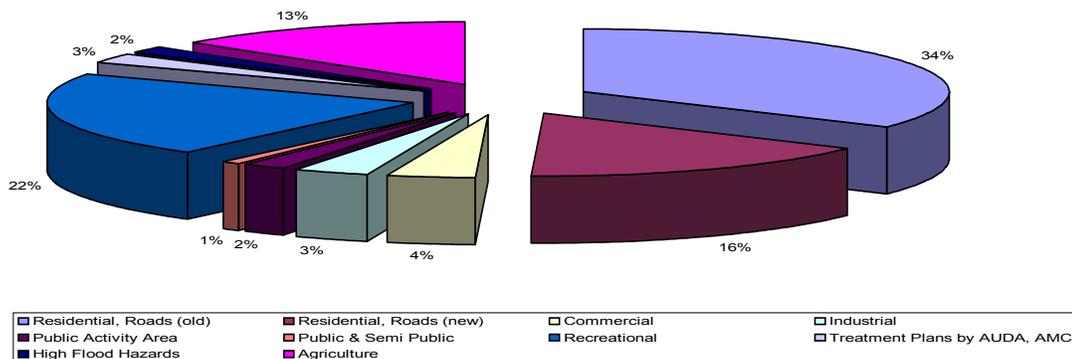
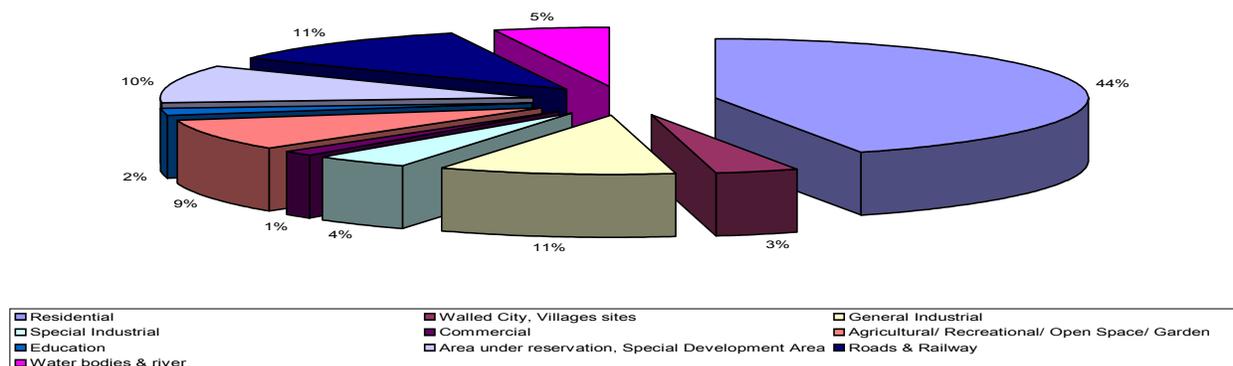


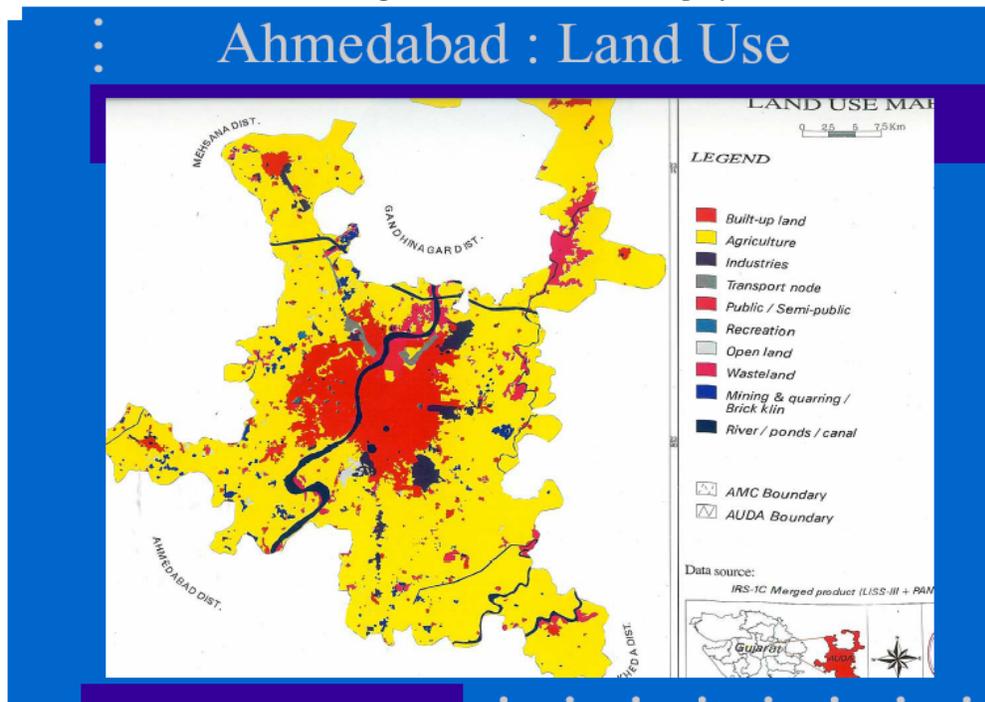
Figure no. 6

Proposed Land Use in Ahmedabad Municipal Corporation area in AUC area



Source: AUDA

Figure no. 7 Land Use map of Ahmedabad



Source: IST - Institute for Studies and Transformation

In unplanned development, land conversion takes place in a haphazard manner and creates sporadic spots of development. In such conditions, regulating the growth of these spot developments and providing physical and social infrastructure on the periphery becomes difficult for local authorities. As the development takes place, need for more and more serviced urban land is generated. The cities have a limited capacity to cater to the land demand, which increase the pressure of development on the periphery. As the demand for urban land increases, the local urban authority has to invest capital for acquiring urban land that is fair, democratic and equitable. In Gujarat this process is carried out under the provision of Gujarat Town Planning and Urban Development Act, 1976. By a novel concept in the city of Ahmedabad, The Land Readjustment system or Town Planning Scheme is used to make a group of land holding in a planned manner. This is essentially achieved by providing each unit with a public road access and regularizing the shape of each plot. The area is surveyed in detail and the process of reconciliation takes place with the revenue maps and documents to finalize the boundary and area of the original plot. Original owner of land has his say in determining the deal and return in terms of profit and a piece of developed plot of land. AUDA constructed community based 1500 dwelling units for weaker section of the society under the scheme. The systematic planning is environmental friendly and mandated tree plantation. (Ann. C, E)

V. LAND LAWS IN AHMEDABAD

As constitutional provision in India, the power pertaining to land is vested in the State. Availability of land has been constrained by mesh of legislations & certain provisions contained in a variety of laws such as the Land Revenue Act, the Land Reforms Act, the Urban Land

(Ceiling and Regulation) Act (ULCRA), the Town Planning Act and the Urban Development Acts. The repeal of ULCRA was expected to ease the situation of artificial shortage of land to some extent. This needs to be followed up by other changes whereby legally valid availability of land for urbanization is speeded up, and people are not driven to adoption of short cuts to obtaining housing plots and other uses.

An individual tends to violate the rule in possessing & using land as well as construction of house. Here the community organizations like cooperative become more law abiding and beneficial to the members in terms of the legality of land & associated immovable property. City survey was introduced under the provisions of the Bombay Land Revenue Code, 1879. It provides the basis for preparation of Development plans under the Town Plan Act. It provides the Records of Rights to the holder of the land & property clearly indicating titles, interest, area, liabilities, easement etc. This scheme covers the extended area of Municipal Corporations & Urban Agglomeration.

1. Land and Ownership Issues

Ahmedabad is one of the largest cities in India in terms of population and area. It is one of the important industrial & commercial cities in the country. It is largest city in the State of Gujarat, seventh in the country, ranked 55th in the world in terms of population, while it is ranked 314th globally in terms of area and 17th in terms of density. Ahmedabad is 3rd most dense city in the country. As per projection at around 2.61% growth rate in terms population, population in year 2005 is projected at 4,760,000 and in year 2015 at 6,160,000. An urban area is different from a municipality (also often called a city). Municipalities have political boundaries that usually include only a part of the urban area. The city has different dimensions as Ahmedabad Municipal Corporation (AMC), Ahmedabad Urban Development Authority (AUDA) and Ahmedabad Urban Agglomeration (AUA). The first two are politically defined, while the third one is informally an agglomeration. The state collects revenue on land & education tax owned in Ahmedabad, while AMC collects taxes on property based on area. Outside AMC, local government & AUDA collects taxes on property. Record related to land is maintained by office of Sub-registrar, State government, while relating to plan approval, taxes & possession is maintained by AMC.

The area under Ahmedabad Municipal Corporation is 449 SQ. KM., and population 44,28,892 (as on 31/03/2005). However, in the year 2006, the area of AMC was extended twice to include about 30 villages, which were suburban & in vicinity of the city. The growth in terms of population, area & density seems to be fluctuating due to amendment in political boundary of the city. However there is steady growth in population and density in any specified region, because of merger of suburban area having less density of population gives fluctuating result after merger. Ahmedabad is 3rd & 17th dense city in India & world respectively. (Table no. 4, page 10,11)

Table no. 4 The population, area, density and comparable rank of Ahmedabad

Urban Area	Population	Mi ²	Density/ Mi ²	Km ²	Density/ Km ²	World rank (Population)	World rank (Area)	World rank (Density)
Ahmedabad	4,300,000	78	55,100	202	21,300	55	314	17

No.	Urban Area	Population	Mi ²	Density (Mi ²)	Km ²	Density (Km ²)
1	Ahmedabad	4,300,000 (7)	78 (8)	55,100 (3)	202 (8)	21,300 (3)
2	Bangalore	5,400,000	206	26,200	534	10,100
3	Chennai	5,950,000	160	37,200	414	14,350
4	Delhi	14,300,000	500	28,600	1295	11,050
5	Hyderabad	5,300,000	225	23,600	583	9,100
6	Kolkota	12,700,000	205	62,000	531	23,900
7	Mumbai	14,350,000	187	76,700	484	29,650
8	Pune	3,750,000	85	44,100	220	17,050

(<http://www.demographia.com>, <http://www.citypopulation.de>, 2003)

Figure no. 8 Largest cities vis-a-vis density & populaition of Ahmedabad



Source: <http://www.demographia.com>, <http://www.citypopulation.de>, 2003

2. Ownership Individual vs. Institutional

A 'person' may holds ownership of the land in the state of Gujarat subject to provisions of Bombay Revenue Code, 1879. The legislation is on foundation of two basic principles; absolute ownership of the land vests in the State government and it is entitled to levy revenue on all kind of land & ownership. The right & obligation of the holder of land is prescribed under the Act.

The ownership & transfer of the land & associated immovable property is governed by provisions of Bombay Revenue Code, Transfer of Property Act and Succession law while local governments exercise control on use of land. The owner may be an individual/s, family, HUF, Government (Central, State, Local), Association of Person, Body of Individual, Non Trading Corporation, Trust (Trustee will hold land in his name), Company or other incorporated or non-incorporated body. Legally different kind of formal ownership (title of property) of land is envisaged ranging from an Individual, group of individuals or artificial juristic persons. The local authority classifies land into agriculture & non-agriculture and sub-classify non-agriculture land into four classes on the basis of permissive use; namely public purpose, residential, commercial

& industrial use. According to local Land Revenue Code, the ownership may be free hold or lease hold. Free hold land can be transferred without any formal restriction, however subject to other provision of contemporary law. The leasehold land or new tenure land can be transferred after formal permission of the competent authority. This provision was brought in 1868 to protect tribal people from exploitation by landlords & rich people. Large chunk of land has no clear and marketable title as such.

The ownership of land, obligations & rights are subject to provisions of series of law. An individual who is domicile farmer of the state or his family can only hold the agriculture land. However the study is intended for residential land users where there are no similar restrictions under the Act. The types of ownership make an impact on spatial growth, efficiency & equity because of differences associated due to legality in treatment of transfer, stamp duty, succession, income tax, economies of scale because of community or joint ownership and priorities set by government from time to time.

3. Individual & HUF

Family of individuals belonging to Hindu, Sikh, Jain can form HUF. Under various Indian legislations Hindu United Family (HUF) is considered as 'person' that possesses rights & obligations like an individual. The expression HUF is used in the revenue statutes, whereas in personal law the expression "Hindu joint family" is used. It consists of all lineal descendants from a common ancestor, and includes their wives and unmarried children. HUF is a separate taxable entity and consists of all persons lineally descending from a common ancestor including their wives and unmarried daughters. The expression is however defined under the Hindu Law as a family, which consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. The relation of a Hindu undivided family does not arise from a contract but arises from status. The existence of the common ancestor is necessary for bringing a HUF into existence and for its continuance a common ancestor is not necessary. An HUF, created by the individual coparcener's own volition, has, in the past, been sufficient to make such self-created HUF as a separate taxable entity. The HUF is purely a creature of law and cannot be created by act of parties save insofar that by adoption or marriage, a stranger may be affiliated as a member thereof. The Supreme Court has held that one male can form with females (such as his wife and his daughter), a joint Hindu family. Under various legislations HUF is considered as 'person' that possess rights & obligations like an individual.

Certain transactions though are transfer generally not regarded as 'transfer' for taxation purpose to the extent they apply to the individual property, if any distribution of a capital asset on the total or partial partition of a HUF and hence it does not attract any capital gain tax. Thus a family as separate legal entity can possess a property and their members are jointly enjoying the rights attached to the property. Therefore change in membership does not affect ownership of a property for family. No official record could be ascertained about ownership of land by HUF, as there is no statutory obligation to register a HUF. The ownership by individual and HUF is by and large on same footing and it is limited applied due to its restrictive nature.

4. AOP/NTC

As an alternate to cooperative housing societies, members of a group may create an Association of Apartment Owners (Persons) for the administration of the affairs of the apartments and the property appertaining thereto and for the management of common areas and facilities. Under Bombay NTC Act, formally the association is known as NTC while group not registered under any law is informally Association of Persons (AOP). The byelaws of such an Association, which include the constitution, structure, and powers of the Association and its office-bearers, are framed, and these abide the Association. The Act also deal with maintenance, repair and replacement of the common areas and facilities and payment for these, as well as the manner of collecting the share of common expenses from the apartment owners/occupants. The formation of an Association or Society of Apartment Owners is for the self-interest of the apartment owners. Without such a body, the many problems of sharing common services and areas, and undertaking maintenance work for the entire complex, may not be properly handled. However, instead of leaving it to the apartment owners to voluntarily come together to form an association, it is considered a good move to put a provision in the Act, making it mandatory for individual owners to become members, with the promoter being made responsible for its registration. Besides, the legislation also provided required legal backing to a number of issues, which arise in the ownership, and management of an apartment complex.

Non Trading Corporations were required to register under provisions of Bombay NTC Act 1959. The entity (NTC) was hybrid of cooperative society, partnership firm and a company, composed of its member to carry out non-trading activities. It was considered as an entity like company, but was unable to trade and hence no equity capital like company existed. Unlike partnership there is no agency principle apply. It was formally Association of Person incorporated under the Act, so state government administers registration, accounting, audit and liquidation of NTC. Under the Act, 13329 'NTC' were registered in Gujarat till February 2005, when Government of Gujarat repealed the Bombay NTC Act 1959. The NTC thereafter are treated as mentioned in provision of sec. 7 of Bombay General Clause Act 1904. The state government officers concerned were unable to clarify how exactly the existing entities (i.e. 13329 NTC) are treated which were registered till the date of repealing the relevant legislation by Government of Gujarat. The builders were taking undue advantage of the Act.

By default if group of persons whether incorporated or not, if work together but does not comply with one of essential condition as particular statute provide, such group is considered as Association of Person (AOP), and under Income Tax law, it attract the highest tax slab on its income.

5. Cooperatives

A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise. Co-operatives are enterprises that put people at the center of their business and not capital. Co-operatives are business enterprises and thus can be defined in terms of three basic interests: ownership, control, and beneficiary.

Cooperatives are treated specially in revenue & taxation laws due to two reasons, one because it is considered as body corporate and a mutual concern, second because Government gives priority as a state policy; compared to other tax payers and hence certain protections like exemption, deduction etc. in form of additional benefits are given to cooperatives by Union and State Governments. The Cooperative laws generally define co-operative society as to means a co-operative society registered or deemed to be registered under the Act.

Housing Cooperatives are formed of eleven or more members for the purpose of construction of houses that are finally allotted to each member. The ownership of the property is vested in society as a whole, but the being member of the society, by virtue of share holding, he is entitled to possess, use & transfer property allotted to him. The housing society acquires land, construct houses and carry out general maintenance of the common property of the society and members pay the dues of his account and he is also entitled to receive any dividend or surplus generated by society. As soon as group of members registers under the cooperative society under the Cooperative law of that state, they become legal entity and they can apply for land in concerned department. After getting the land, society can apply for loans for housing in any private or public banks. This type of system shows that highly developed and easily accessible financial system is important for the development of housing cooperatives. As there is more provision for the access to loans of every sector of people, there are more chances of the emergence of innovative solution like cooperative in housing. Furthermore, India has a mature type of financial system, which incorporates many financial institutes like banks, insurance companies and the other lenders for the housing cooperatives.

Only a registered instrument can make transfer of property rights under Indian Registration Act. Further, in case the property is in a cooperative society one has to get the name of transferee included in the cooperative society upon complying with the requirements of the Society by-laws, rules/regulations in this behalf. Neither stamp duty was levied nor registration was mandatory in case of transfer of any property in cooperative society. However, by series of amendments in Stamp Act, the transfer of property by membership right and allotment of new membership has been brought to tax net under Stamp Act and hence registration is also became mandatory that has enhanced cost for any property allotment & transfer of existing property. Not only that, under byelaws of the society, cooperative society are levying transfer fee from incoming member. And as there is no express legal provision on the amount that can be charged from new member, many cooperative societies are exploiting situation and are charging high fees from the members. However, recently Delhi High Court in its benchmarking judgment, restrained cooperative society not charge higher transfer fee than INR 10,000 in any case. Similarly, in case of HUF, the members need not to register documents in case of transfer among the member, but only to execute composition deed.

There was provision under Bombay Stamp Act (Annexure F), which offered relief (6% of value of property for cooperative, 8% for others) in stamp duty if the transfer document is pertaining to the property in a housing cooperative. On 23rd February 2007, The Finance Minister, Gujarat State proposed reduction in stamp duty while presenting budget for the year 2007-08. The proposed stamp duty is 4.90 % and registration is 1% of value of the property, that indicate

reduction of 1.05% & 0.50% in stamp duty & registration fees respectively. Women transferee has been given relief since 2005 from registration fee.

By way of transferring unit to a member, cooperative society enjoys tax benefits as provided in tax legislation and supported by courts, it was held by apex court that transfer fee received by the co-operative society is not taxable in the hands of the society on the grounds of mutuality. It is not necessary that the individual identity of contributors and participators to the common fund should be established. Such identity should be established between the class of contributors and the class of participators. This principle is indirectly confirmed by the Supreme Court's judgment in the case of Bankipur Club Ltd & The Bombay High Court in Presidency Co-operative Housing Society that such transfer fees are revenue receipts of the society and hence is taxable, however, in this case the principle of mutuality was not argued and the same was not considered. Co-operative Societies are required to transfer certain amounts to Education Fund or Reserve Fund under the Co-operative Societies Act. These funds can be invested and utilized in the manner and on the terms and conditions laid down by the Registrar of Co-operative Societies. Thus government uses the fund so generated for social purpose.

6. Housing Cooperative Movement

The Indian cooperative housing movement is well spread across the country and has developed over the years into a noble and popular movement and in a position to serve the poorest of the poor living in the slums. Starting from a humble beginning in 1909 when the first housing cooperative was set up in Bangalore, the housing cooperative movement has a glorious path of progress and achievement. Today there are 92,000 primary housing cooperatives with a membership of over 6.5 million in the country. These housing cooperatives have constructed/financed about 2.5 million housing units in various parts of the country.

The cooperative housing movement is well rooted in India and during the nine decades of its existence it has made conscious effort to champion the cause of suitable housing accommodation at reasonable and affordable cost on easy terms of payment to the common populace. However, the performance of housing cooperatives is highly influenced by the availability of low cost fund and other major constraints such as availability of land and other legal bottlenecks. The National Cooperative Housing Federation operates through 26 apex cooperative housing federations in the states. Up to 31 March 2001, the apex federations have mobilised INR 64070 million from Life Insurance Corporation, National Housing Board, Housing Urban Development Corporation, commercial and cooperative banks etc., and disbursed loans of INR 68000 million to housing cooperatives and individual members. As a research conducted by World Bank emphasized three (Tenure security, property rights and land development regulations, Housing finance and Service provision) items as *sine qua non* for sustainable housing development, it can be achieved by mechanism by symbiosis relations of Self Help Group and Cooperatives. Housing Cooperatives have provided 7 million dwelling units in urban area till date. There is a need to increase the supply of affordable housing to the economically weaker sections and the low-income category through a proper program of allocation of land, extension of funding assistance, and provision of support services.

The national habitat policy has realized the importance of co-operative societies and has asked them to build a hundred thousand houses per year. The policy specifically states that housing co-operatives should be given preference over individuals in the area of housing. The apex bodies of the co-operative societies support these primary societies.

To start a housing cooperative, to build a building or group of buildings to house the members, this require significant mortgage for which a financial institution will want assurances of responsibility, and it is possible only on land having clear & marketable title. It is rare that these kinds of skills of organization are available in a random group of people who often have pressures on their existing housing. It may be somewhat easier to organize a group of closely related housing units.

The National Agenda of Government also emphasized that housing activity would be an engine for substantial generation of employment, and all legal and administrative impediments that stand in the way of vigorous housing activity should be removed forthwith. What is undoubted is that governmental initiatives-and its “facilitating role’-have a significant impact on the provision of housing and growth of the sector. These initiatives and interventions relate to legislations relating to land ownership, transfers and development; stamp duty and registration laws; rent control legislation, tax policy particularly relating to housing loans; property and land tax laws are very crucial in healthy urbanization.

In order to increase the proportion of household savings to be invested in the housing sector, as well as to provide houses to those who cannot as yet afford to have their own houses, there is need to encourage promotion of rental housing by private sector, public sector, as well as cooperatives and individuals.

The study of type of buildings and nature of ownership in Ahmedabad reveals that out of total housing 30% are contributed by cooperatives while 10% by NTC. Total number of housing cooperative societies stand to be 4,965 comprised of 2,70,158 units as members. The residential buildings are 787063 out of total building 1054343 in the city.

Table no. 5 Housing Cooperative Societies Statistics

Particulars	India	Gujarat*	Ahmedabad*
No. of Housing Societies	90,000	16,477	4,965
No. of Members	650,00,000	68,60,926	2,70,158

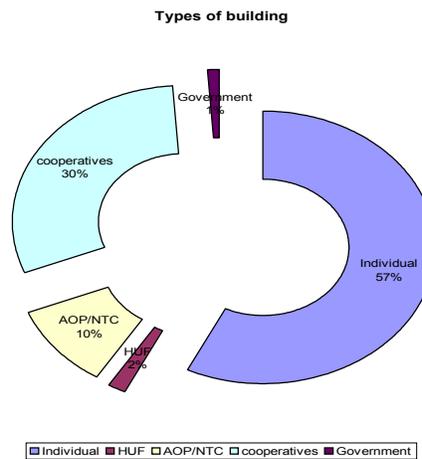
*Source: The Registrar, Cooperative Societies

Table no. 6 Residential Building Ownership Breakup

Sr. No.	Type of ownership	Number of Members	Number of Entities
1	Individual	5,11,905	N/A
2	HUF	16,000	N/A
3	AOP/NTC	89,000	6,500
4	Cooperatives	2,70,158	4,965
5	Government	9,600	N/A

Source: AMC

Figure no. 9A



Source: AMC, Registrar of Cooperative Society, Commercial Tax Office

Table no. 7 Illegal Constructions of buildings in Ahmedabad

Sr. No	Type of ownership	Defective Title	Illegal Construction
1	Individual	26,000	43,000
2	HUF	N/A	N/A
3	AOP/NTC	N/R	-
4	Cooperatives	N/R	-
5	Government	N/R	N/R

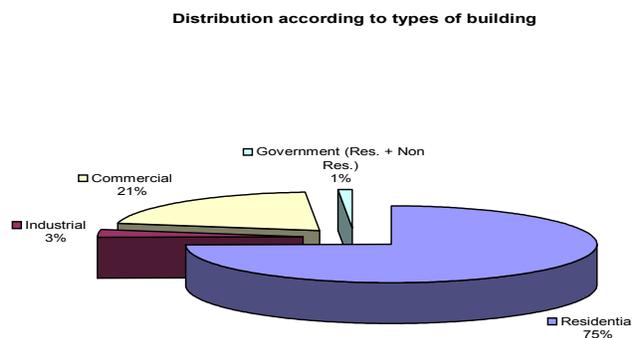
Source : Compiled

Table no. 8 Type of Buildings in Ahmedabad

No.	Type of buildings	No. of units	Total area Mt ²
1	Residential	787063	36391770
2	Industrial	34583	11087133
3	Commercial	220608	13960316
4	Government (Res. + Non Res.)	12089	1365032
5	Total	1054343	62804253

Source: AMC

Figure no. 9B Distribution of Buildings in Ahmedabad



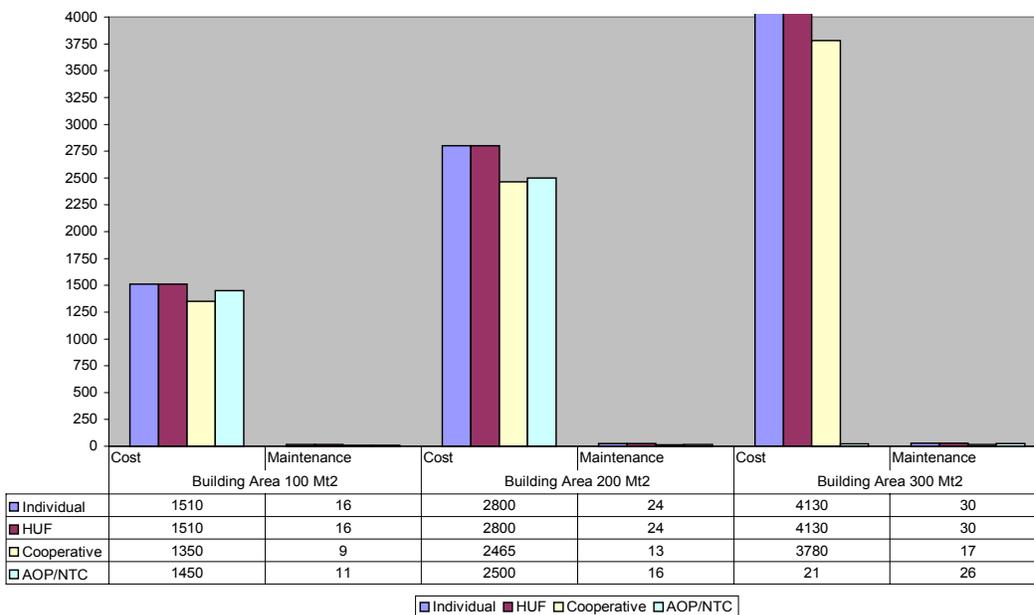
Source: Ahmedabad Municipal Corporation

7. Benefits of Housing Cooperatives

Cooperative Housing Societies spend money on behalf of the members for building the houses, and the houses are handed over to the members when ready and the money spent is recovered. UN-Habitat (2002a) argues that throughout the world, housing through cooperative has a very satisfying experience. First of all, it enables people, especially the low-income population to have a home. It also affords an opportunity to channelize human initiatives, enterprise, and supervisory capabilities and facilitate flow of personnel/ household savings for the objective of acquiring the housing unit. The resultant housing unit emerges as a durable house at economical cost with best functional utility and with a real sense of home. The table & graph in Fig. 10 shows that the initial construction cost & recurring maintenance cost in case of cooperative & NTC ownership is marginally less. Houses through cooperatives have a positive experience in terms of affordability, durability, utility and reliability. Collateral benefits which accrue to people through housing cooperatives are multifarious - better living environment through better accessibility to household services and basic amenities of drinking water, drainage, sewerage and waste disposal, improved physical infrastructure support of internal roads, and electricity.

Housing cooperatives allow members to easy access to cheaper urban services. A cooperative enables people in decision making according to their need. As many houses are constructed together, it reduces the overall cost of housing. It encourages people to participate self-management ensuring a better living area as a whole. In a housing cooperative, people join to form a cooperative that owns the buildings in which they live. Purchasing a share in the cooperative entitles each member to lease and occupy a dwelling unit, and to participate in its operation. Each member pays a share of the cooperative's monthly expenses.

Figure no. 10 Cost & Maintenance of buildings



Source: Compilation of quotations submitted by builders

Housing cooperatives are democratically controlled, meaning that each member has one vote in deciding the affairs of the cooperative. Housing cooperatives offer affordability, a sense of empowerment in that residents have control of their own living situations, and the permanence and stability that comes with home ownership. The basic steps involved in organizing a housing cooperative may occur in a different order or even simultaneously, depending on the project.

As reported in the study of Ahmedabad, the illegality in terms of construction, type of use, building use permission and title of land is substantially high in case of individual, vis-à-vis community institutes. By an estimated report there are 26000 defective titles & 43000 illegal constructions of buildings owned by individual, while it is not reported numbers in community entities. Table 9 depicts the differences between a Cooperative and NTC.

Table no. 9 Cooperative vs. NTC

Particular	Applicable to NTC	Applicable to Co-op. Soc
Authority	Non Trading Corporation is a state level Act, which is monitored by Registrar, NTC, delegated to Sales Tax Department	Co-op. Society is both state & central Act. There is a separate set up under the Co-op Department
Concept of benefit	NTC impart Non Trading activities for the benefit of its member, without carrying commercial or profit making activities	Co-op. Soc. is on the principal of co-operation and can also take commercial or profit earning activities
Status	Under Income Tax NTC is considered as A.O.P., taxed at maximum marginal rate if there is a surplus or the surplus is allocated to the member and in the hands of the member such surplus is taxable	Co-op. Soc. is assessed as a Co-op. Soc. under Income Tax. There are separate provisions and rate of assessment for the Societies
Audit Monitoring	In the state of Gujarat NTC is required to get its accounts audited. The Chartered Accountants are authorized to carry the Audit. There is no Audit monitoring system by the Registrar NTC.	Registrar is the Authority for all purpose. C.A. as well as certified auditors and the department of Co-op. Soc. are authorized for audit; detailed audit structure is adopted and monitored by the registrar.
Distribution of Surplus	NTC can not distribute the surplus, since it is for non profit making activities	Society can distribute its surplus by way of Dividend
Membership	Membership is by way of allotment of shares and are transferable as per the articles of association	Membership is by way of share, which can be regular member as well as nominal member
Basic Documents for Registration	Memorandum of Association and Articles of the Association, which provide for all administrative and working rules for the management.	By laws is basic document & model is prescribed under the rules of the Co-op. Soc. for different class of society

The study of pattern in illegal construction reveals that there is secured & marketable title of the ownership and low compliance cost for members & monitoring cost for government if land ownership vests in community organization. Thus there is low risk to members for non-compliance. This leads to visible advantages to the members of community organization as under:

1. Easy access to infrastructure and services
2. Members take final decisions about affairs of society, self-management
3. Low-cost of materials, services & administrative cost

4. A good living environment
5. High level of participation
6. Continuous training and education & Capacity Building
7. Equitable Human Settlement
8. Open & voluntary membership, equality of access to services
9. Poverty Alleviation through cooperative
10. Stewardship in sustainable human development, concern for community
11. Conservation of natural resources
12. Improvement in quality of life of members' socio-economic needs
13. Democracy, Equity and Social Responsibility
14. Partnership in Development without compromising autonomy and independence
15. Solidarity Co-operation among co-operatives
16. Tax advantages to members & cooperative

Source: Social and Economic Benefits of Housing Cooperatives; HUDCO

VI. SUGGESTIONS

The state should frame policies to encourage community organizations in urban development. The special legislation should frame to protect interest of house owners. Suitable amendment should bring in after careful research in the problem area. Many of the urban poor have to house themselves illegally because; land policies do not make sufficient developed land available. Urban planning tools, including master planning, zoning and plot development regulations, are not appropriate to make land available in pace with rapid urbanization, resulting in insufficient land supply and increases in land prices. Master plans are too centralized, take too long to prepare, and fail to address implementation issues or the linkages between spatial and financial planning. Community organization should be involved from the concept of town planning to execute town-planning scheme. Land and housing regulations make housing unaffordable, unrealistically high standards for subdivision, project infrastructure, and construction make it impossible to build low-income housing legally. Urban land supply is restrained by extensive public ownership of land and unclear land transfer procedures, unrealistic standards for land and infrastructure development; complex procedures of urban planning; blurred responsibilities among public agencies and limited land supply will cause the prices to increase. Promoting community land development can mitigate the limitations described here.

Land and housing regulations make it difficult for the poor to follow cumbersome procedures. Observations show that the processes of obtaining construction and occupancy permits are complicated, not well understood by the poor, especially immigrants from other states & village area, time consuming and costly. The result is invasions of state land or purchases of unplanned land from illegal agents. Community ownership enhances compliance & legality.

The government should establish systems to provide tenure security in view of the country's cultural context and communities' particular circumstances. If the majority of land acquisition practices and tenure systems do not fit into the current legal system, regulatory and policy frameworks have to be adjusted to incorporate current practices. Systems need not be restricted to free-hold titles, but can be flexible. For example protected use rights can be gradually

upgraded to full ownership rights. The government needs to establish and publish guidelines for property registration and development. Also, property rights should be designed to allow free transaction of property. There must be transparent record of rights and charges on property. That will strengthen confidence of financing institutes and lessen the disputes. It may often be possible to sell occupied public lands to the resident communities or individuals. Easy market transactions through clear and simple sales and registration procedures and taxation policies. Land & Related taxes including registration of land documents are vested in power of State government under Constitutional framework. There is therefore variation in procedure and rate of stamp duty from one state to another. Anomalies, lack of awareness and high taxes constrain official transactions, which lead to illegal transactions. This perpetuates the lack of clear ownership. The uniformity in procedure will smoothen record keeping and transactions.

Cities, State and national authorities should explore practical but transparent methods to promote the better utilization of public land while improving access for the poor. Policies at the central level should set out a broad framework, while more detailed planning policies should be designed at the local level. For example, density levels in different parts of the city and infrastructure standards should be decided at the city level, in consultation with local communities.

The proliferation of informal and illegal forms of access to urban land and housing has been one of the main consequences of the processes of social exclusion and spatial segregation that have characterized intensive urban growth in Ahmedabad. Given the absence of adequate housing policies and the failure of the land market to offer sufficient, suitable and accessible housing options, millions of urban poor have to create their own shelter by buying land illegally or with defective title of land and constructing their own housing. To prevent the production of these perverse effects, it must identify and understand the factors that have contributed to the phenomenon of urban illegality. To legalize the illegal requires the introduction of innovative legal-political strategies to promote the articulation of individual land tenure with the recognition of community housing rights.

The tenure policies need to integrate factors like legal instruments that create effective rights; socially oriented urban planning laws; political-institutional agencies and mechanisms for democratic urban management by creating conducive policies for community based ownership of land. The system of maintenance of land records and registration of property transactions need to be modernized. There is need to develop and implement a system of authentication of property titles. This will make it easier for interested parties to enter into land transactions with higher confidence. Together with the rationalization of stamp duty, there must be relief in stamp duty for registering documents for 'Institutional Ownership' like HUF, AOP, NTC, Cooperatives etc; these measures will help in the development of a genuine property market, which will prove beneficial for the assessment of taxes where property values are the basis.

100% foreign direct investment (FDI) has been permitted in the development of integrated townships. However, investments may not materialize unless the conditions relating to land procurement are made simple. In urban areas, especially those with Master Plans, the needs of urbanization should have precedence over land revenue and land reforms legislations in which restrictions on land ownership, transfers, and land use are incorporated in order to prevent the

conversion of agricultural land. Community organizations should be permitted to borrow limited fund from foreign sources. With the anticipated entry of FDI into the real estate sector, care has to be taken that the needs of the urban poor and marginalized sections are not ignored. Cooperatives for weaker sections may be given priority in land allotment in periphery of the urban boundary.

Increased availability of developed land in urban areas through adoption of various innovative approaches like land bank for the poor and land assembly methods, vacant land tax and transferable development rights and simplification of sub-division regulations is called for development of industrial areas and housing areas.

Balancing the liberal availability of land, with the demands of orderly growth with adequate provision of infrastructure is the key point in urban management. The efficacy of town planning and urban development programs lies in meeting the growing demand for housing in urban areas that ensure orderly urban growth. Public and private initiatives in various parts of the country have already demonstrated that, given the will and efficiency of implementation, it is possible to plan ahead and promote organized growth. These efforts need to be made more widely replicated by means of community participation. Increased availability of developed land in urban areas through adoption of various innovative approaches of land bank for the poor and land assembly methods, as well as using of methods such as vacant land tax and transferable development rights, extension of security of tenure to the low-income population through adoption of pragmatic methods and development mechanisms of in pooling of land, judicious relocation & land sharing through cooperatives & NTC will have positive impact on spatial & equitable growth.

The regulations related to infrastructure investments and taxation – has a direct impact on urban land supply and on the demand for land, and therefore on the price of land and housing. Co-operative sector is to be given tax preference & in allotment of land and house sites to encourage group housing. That will ensure spatial growth with efficiency and equity.

VII.CONCLUSION

The analysis of Ahmedabad land ownership issues by individual vis-à-vis community organization reflects importance of various community organizations like housing cooperatives & NTC in development of city. As little less than half the land & property is owned by community organization in the city, the spatial growth of the city is to the extent contribution of these organizations. As community organizations are formal institutes and regulated by government agencies, managed by community it self, the property and related expenses are shared by large number of members; community organizations offer affordable housing with remarkable efficiency. The legal compliance ensures rights of the members in long run and smooth administration for the government. As cooperatives are shelter for weaker section of the society, the government may use it as vehicle of promotion of equity and social justice. Cooperatives and NTC is an instrument for designed growth as pooling and allotment of land to community organization ensures sustainable urban development. Cooperatives and NTC are not only cost effective in construction of house, but also effective in service delivery at reasonable

cost. Due to its formal structure and regulation, it allows access of credit on the property and ensures recovery of loan extended on such property, thereby building sound financial market. The major problems observed in managing community organizations are traceable & manageable by suitable amendments in relevant legislations to make simple, precise and balanced legal framework supported by professional system of administration.

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ANNEXURES

Comparative Population Trend for Globe, India, Gujarat & Ahmedabad:

Ann. A

Sr.No.	Year	Globe (Billion)	India (Million)	Gujarat (Million)	Ahmedabad
1	1950	2.52			
2	1951		361.1	16.263	837163
3	1960	3			
4	1961		439.2	20.633	1149918
5	1971		548.2	26.697	1585544
6	1975	4.07			
7	1981		683.3	34.086	2059725
8	1987	5			
9	1991		846.3	41.313	2876710
10	1999	6			
11	2000	6.09			
12	2001		1012.4	50.671	3515361
13	2005	6.46			

Source: Planning Commission of India & Department of Census, India & <http://www.un.org/esa/population/publications/WUP2005>

Population of India by Urban vs. Rural Residence (1901-2001):

Ann. B

Years	Number of Town	Total population	Urban population	Rural Population
1901	1827	238396327	25851873	212544454
1911	1825	252093390	25941633	226151757
1921	1949	251321213	28086167	223235046
1931	2072	278977238	33455989	245521249
1941	2250	318660580	44153297	274507283
1951	2843	361088090	62443709	298644381
1961	2363	439234771	78936603	360298168
1971	2590	598159652	109113977	489045675
1981	3378	683329097	159462547	523866550
1991	3768	844324222	217177625	627146597
2001	5161	1027015247	285345954	741660293

Source: Census Office

Population Growth in Gujarat & Ahmedabad (Area & Density):

Ann. C

Year	Gujarat		AMC			AUA*
	Area 196024 Km ² Population Density		Area (Km ²)	Population million	Density (per km ²)	Population (million)
1951	16.263	82	52.47	0.84	16010	0.88
1961	20.633	105	92.98	1.15	12300	1.21
1971	26.697	136	92.98	1.59	17100	1.75
1981	34.085	173	98.15	2.06	20985	2.55
1991	41.309	211	190.15	2.88	15074	3.31
2001	50.671	258	202.00	3.51	18420	4.40
2006		N/A	449.00	4.42	9844	6.00

Source: Ahmedabad Municipal Corporation, Data for 2006 is not as per census

Land in Ahmedabad:

Ann. D

Sr. No.	Geographical region	Type of land	Area in hectare
1	Ahmedabad District	Total	774836
2	Ahmedabad city	Total	44934
3	Ahmedabad District	Agriculture	623302
4	Ahmedabad District	Used for agriculture	566220
5	Ahmedabad District	Not used for agriculture	57082
6	Ahmedabad District	NA, Used for residential, villages	66621
7	Ahmedabad District	Public use	10881
8	Ahmedabad District	Industrial	NA

Rate of conversion tax per square meter:

Ann. E

Sr. No.	Area in which land is situated	Rate when land is to be used for temporary non-agri purpose or for residential or charitable purpose	When for industrial purpose or any other purpose
1	Villages, municipal boroughs, notified areas and cities having population not exceeding 100,000	Rs. 2	Rs. 6
2	Municipal boroughs, notified areas & cities population exceeding on 100,000	Rs. 10	Rs. 30

Source: Collector, Ahmedabad

The rate of stamp duty in case of executing an instrument for sale of immovable property:

Ann. F

As per Bombay Stamp Act applicable in Gujarat (2003)		As per Bombay Stamp Act applicable in Gujarat as amended in 2003-2004*	
Type of owners	Rate of Stamp Duty	Type of owners	Rate of Stamp Duty
For transfers by person other than a member of cooperative society	8%+25% of duty = 10%	For transfer by any person in favor of other than a female	5.95% (stamp duty with surcharge) of Fair market value of the property plus 1.50% registration fees
For transfer relating to premises in Co-operative Society	6%+25% of duty = 7.5% of Market value of Property	For transfer by any person in favor of a female	5.95% (stamp duty with surcharge) of Fair market value of the property

Source: Sub Registrar, Ahmedabad