

EVALUATING THE RULE OF LAW IN INDIA'S DEMOLITION DRIVES AND EVICTIONS

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Abstract

India has witnessed a surge in demolition drives across various states, targeting allegedly illegal constructions, particularly in Muslim-dominated areas. These drives have sparked controversy, with critics labeling them as "targeted bulldozing" and alleging violations of human rights and due process. In response, the judiciary has intervened, issuing stays and directives to ensure compliance with constitutional principles. The Supreme Court and High Courts have emphasized the need for fair procedure, proportionality, and distinction between legitimate enforcement and discriminatory action.

This paper examines the intersection of executive power, judicial oversight, and human rights in the context of India's demolition drive. It analyzes:

1. Constitutional framework: Rule of law, due process, and protection against arbitrary state action.
2. Judicial interventions: Key court orders, stays, and directives regulating demolition drives, Contempt of Court.
3. Human rights implications: Displacement, marginalization, and impact on vulnerable communities.

The study highlights the critical role of judicial oversight in checking executive excesses and upholding constitutional values. It underscores the importance of balanced governance, ensuring accountability, and protecting human rights amidst enforcement initiatives.

Introduction

“लोग टूट जाते हैं एक घर बनाने में,
तुम तरस नहीं खाते, उनको खंडर बनाने में,
खुशियों का सपना एक पल में उड़ा देता हो,
क्या इंसानियत भूल गए, इन दिलों को तोड़ देते हो”।

I deeply admire the profound beauty of Bashir Badar's poetry and seek to honor his work. With utmost respect, I have modified a few lines to reflect the current situation regarding demolition drives and the loss they bring.

In recent years, India has witnessed a surge in demolition drives across various states, with authorities citing illegal constructions, encroachments, and urban renewal as justification. However, these drives have sparked intense controversy, with allegations of targeted bulldozing, human rights violations, and discriminatory action against marginalized communities.

The nation has been witnessing a frenzy of demolition drives for the past few weeks. Article 300A of the Indian Constitution categorically states “No person shall be deprived of his property save by the authority of law.”

This idea of serving ‘justice’, quick and cold, through bulldozers emanated in Uttar Pradesh. In the wake of protests against the Citizenship (Amendment) Act, 2019 the Uttar Pradesh government passed orders to recover damages from those who were allegedly involved in destroying public property.

The intersection of executive power, judicial oversight, and human rights has come under scrutiny, raising fundamental questions about the rule of law, due process, and the protection of citizens' rights. As the country grapples with the complexities of urbanization, development, and governance, the demolition drives have exposed deep-seated issues of accountability, transparency, and social justice.

This paper explores the intricate dynamics of India's demolition drive and the judicial intervention that has followed. By examining the constitutional framework, judicial precedents, and human rights implications, this study aims to provide a nuanced understanding of the tensions between executive authority and individual rights. Ultimately, this analysis seeks to illuminate the critical role of judicial oversight in ensuring that the state's enforcement initiatives align with the principles of justice, equality, and human dignity.

Through a critical examination of India's demolition drive and judicial intervention, this paper argues that effective judicial oversight is essential to prevent executive excesses, protect human rights, and uphold the rule of law in the face of increasing state action.

Concept of Rule Of Law

“The rule of law should be respected so that the basic structure of our democracy is maintained and further strengthened.”

Lal Bahadur Shastri

One of the foundational concepts of our modern democratic society is the rule of law. Rule of Law according to Dicey, is one of the basic features of the English constitutional system.^[1] The Rule of Law is a fundamental principle of constitutional law and serves as the cornerstone for the development of administrative law. This principle asserts that law is the foundation of a civilized society, and all actions must be conducted in accordance with the law.

This rule treats law as supreme.^[2] Whether an individual or the society as a whole, everyone is questionable under the supremacy of law. Irrespective of the fact who he is or how high he is, he is under the law.^[3]

The concept of the Rule of Law is that the State is governed by the law and not by the ruler or nominated representatives of the people. The King is not the Law, but the Law is the King.^[4] The term ‘Rule of Law’ is defined nowhere in the Constitution of India. It can be found in the judgements passed by the courts of Indian jurisdiction. The Supreme

Court has declared “Rule of Law as one of the basic features of the Indian Constitution”^[5], so no Constitutional Amendment can take away this principle.

The Rule of Law is comprised of a complex chain of fundamental ideas; which includes the independence of the judiciary; equal treatment before the law for the governed and the government; the concept of equity, justice, and fairness; equality before law and transparency, consistency, and accountability in the administration of law. Rule of Law has been originated in England and India derived it from England. As per Article 13 of the Constitution of India, Rule of Law means the law of land.

Prof. A.V. Dicey has attributed the following three principles to the Rule of Law:

1. Absence of discretionary power in the hands of the government officials (Supremacy of Law),
2. Equal subjection of all men to the Law of the Land (Equality Before Law),
3. Judge-made Constitution (Predominance of Legal Spirit).

The preamble of the Indian Constitution lays out important principles of the rule of law, focusing on justice, fairness, and freedom. Article 14 guarantees that everyone is treated equally under the law. Fundamental rights, listed in Articles 13, 14, 15, 19, 21, 22, 25, 28, and 31A, are available to all Indian citizens. If these rights are violated, people can go to the High Court for help under Articles 32 and 226.

Moreover, any laws made by the central or state governments must follow the Constitution. If a law goes against the Constitution, it is considered invalid. Article 32 gives the Supreme Court the power to issue various orders, like habeas corpus, mandamus, prohibition, quo warranto, and certiorari. This ability, known as judicial review, allows the Supreme Court to protect the rule of law and stop any laws that are unconstitutional. In essence, the rule of law in India is a key principle based on the Constitution.

The rule of law is a cornerstone of democratic governance, ensuring that all individuals and institutions are subject to and accountable under the law. The Rule of Law plays a

crucial role in the context of demolition drives and evictions, as it ensures that such actions are conducted fairly, transparently, and in accordance with established legal procedures. This principle mandates that authorities must adhere to legal standards, providing affected individuals with due process and the right to challenge decisions in court. When demolition drives and evictions occur without proper legal justification or oversight, they can undermine the Rule of Law, leading to potential abuses of power and violations of human rights. Maintaining adherence to the Rule of Law is essential to ensure that the rights of individuals are protected during these often-contentious processes.

The adherence to the rule of law in India's demolition drive is questionable. While the judiciary has played a crucial role in upholding the rule of law in some cases, challenges and limitations persist. Ensuring the rule of law in demolition drives requires strengthening institutional mechanisms, enhancing transparency and accountability, and protecting the rights of affected individuals and communities.

Demolition Drives and Evictions

According to the Housing and Land Rights Network (HLRN), over 738,000 people were forced to leave their homes in India between 2022 and 2023 due to demolition drives. This is a result of 153,820 homes being demolished by local, state, and central authorities. The main reasons for these evictions were to remove encroachments or settlements, or for beautification and development plans. Demolitions of alleged rioters' and offenders' homes and other assets in states managed or controlled by India's ruling Bharatiya Janata Party (BJP), whether in New Delhi, Madhya Pradesh (MP), or Gujarat, are increasingly seen as collective punishment. Is it legal for the government to demolish offenders' property as a form of punishment for criminal offences? No, is the quick response. Criminal offences can only be punished with the legal penalties that apply to those offences.

There is currently no criminal statutory provision in place in the country that mandates the demolition of an offender's home as a punishment for any crime. As a matter of fact, the rhetoric being used by Bharatiya Janata Party politicians that the recent demolitions in

Madhya Pradesh, Gujarat, and Delhi are in response to the residents of the demolished properties indulging in communal conflicts in these areas is without legal foundation.

The provisions of Chapter VIII of the Indian Penal Code [IPC] make offences against public peace, such as rioting and inciting strife between social groups, punishable. For the offences listed in this chapter, none of the sections allow for property demolition as a punishment.⁸ In the case of *In Re: Destruction of Public & Private Properties vs. State of A.P. & Ors.* (2009),⁹ the Supreme Court laid down a detailed set of guidelines for states to follow in the absence of legislation to assess damages and recover damages for those who destroy public and private property during riots, bandhs, hartals, or demonstrations.

According to these guidelines, in the event of mass property destruction as a result of protests or processions, the relevant High Court or Supreme Court (if the damage occurred in multiple states) may take *suomotu* action and appoint a Claims Commissioner who will estimate damages and investigate liability. Furthermore, both the actual offenders of the crime and the organizers of the event that gave rise to the liability must bear responsibility. Exemplary damages may also be given, but only to the extent that they do not exceed double the amount of damages owed.

The legal framework governing demolition drives in India involves various laws, regulations, and judicial guidelines aimed at ensuring that such actions are conducted fairly and within the bounds of the law^[6].

1. Local Municipal Laws

- **Building Bye-laws:** Each municipality has its own set of building regulations that outline what is permissible in terms of construction. Unauthorized constructions may be subject to demolition.
- **Land Use Policies:** Zoning laws dictate how land can be used. Structures built contrary to these regulations may be demolished.

2. The Delhi Development Act, 1957

- This act empowers the Delhi Development Authority (DDA) to regulate land use and development in Delhi, including the authority to demolish illegal structures.

3. The Public Premises (Eviction of Unauthorised Occupants) Act, 1971

- This law provides a mechanism for the eviction of unauthorized occupants from public premises, including provisions for due process.

4. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

- While primarily focused on land acquisition, this law emphasizes fair compensation and rehabilitation for those displaced, which is crucial in demolition contexts.

5. Judicial Guidelines

- The Supreme Court of India and various High Courts have laid down principles regarding demolitions, often emphasizing the need for due process. Courts may require:
 - Adequate notice to affected individuals before demolition.
 - A fair hearing opportunity for those contesting the demolition.
 - Consideration of rehabilitation for displaced individuals.

6. The Environmental Protection Act, 1986

- For demolitions involving significant environmental impact, this act requires environmental clearance and adherence to regulations regarding ecological balance.

7. Human Rights Considerations

- Judicial precedents emphasize that evictions and demolitions should respect human rights. Courts may intervene if actions are deemed arbitrary or unjust.

8. Articles of the Constitution

- Article 21: Guarantees the right to life and personal liberty, which courts interpret as including the right to shelter.
- Article 14: Ensures equality before the law, requiring that demolitions and evictions be applied uniformly and fairly.

Judicial Intervention

Supreme Court's Stay Orders in multiple cases, the Supreme Court has stayed demolition drives, directing authorities to maintain status quo until further orders. Example: ShaheenBagh demolition drive (2020) - Supreme Court stayed the demolition, emphasizing the need for due process. In 2022, concerns were raised against trend of demolishing the homes of people accused persons. It was emphasized that right to a home was a facet of the right to life under Article 21 of the Constitution. Petitions were filed against 2022 demolition drive in Delhi's Jahangirpuri. It was submitted that such demolition drives against properties of accused cannot be taken as an extra-punitive measure.^[7]

Various High Courts have quashed or stayed demolition notices, citing procedural lapses and human rights concerns. Example: Kolkata High Court stayed the Tangra demolition drive (2020), ruling that the demolition was "arbitrary and violative of Article 21."

Interim Orders-Courts have issued interim orders, halting demolitions and directing authorities to provide alternative accommodations.

Example: Delhi High Court's interim order (2022) stayed the demolition of a slum in Delhi's Kalkaji area. In an interim order on September 17, the top court directed that there should be no demolition without the permission of properties of people just because they are accused of being involved in a crime.^[8] Previously, the Court expressed that guidelines on 'Pan-India Basis' would be laid down, so that the concerns regarding demolition of properties of accused persons are taken care of. The Court also sought all parties' suggestions to frame appropriate guidelines.^[9]

“Till the next date of hearing, we direct that there shall be no demolition anywhere across the country without seeking leave of this Court. We further clarify that our order would not be applicable if there is an unauthorised structure in any public place such as a road, street, footpath, abutting railway line or any river or water bodies and also to cases where there is an order for demolition made by a Court of law,” the SC had said.^[10] The Supreme Court has directed a status quo on the proposed evictions and demolitions in Assam’s Sonapur. The contempt plea stated that the houses were marked for demolition without any prior notice or hearing^[11].

Human Rights Implications

Demolition drives, often undertaken in the name of urban development or legal enforcement, can raise profound human rights concerns, particularly regarding the right to housing, due process, and property rights. When families are forcibly displaced, they not only lose their homes but also face significant disruptions to their livelihoods, leading to economic instability and increased vulnerability.

Moreover, these actions frequently occur without adequate notice or opportunity for legal recourse, undermining the principle of due process and leaving affected individuals without a means to contest such decisions. Vulnerable and marginalized communities often bear the brunt of these demolitions, raising critical issues of discrimination and systemic inequality.

The psychological impact of losing one’s home can be devastating, resulting in trauma and long-term emotional distress for individuals and families. To address these multifaceted concerns, it is essential that demolition drives comply with international human rights standards, ensure fair compensation for affected residents, and provide viable alternatives to displacement. Moreover, meaningful engagement with impacted communities throughout the decision-making process is crucial to uphold their rights and dignity.

Conclusion

The rule of law is crucial in ensuring that 1 drives are conducted in a fair, transparent, and accountable manner. India's constitutional provisions, statutory framework, and judicial pronouncements provide a robust foundation for protecting individual rights. However, challenges and concerns persist, underscoring the need for continued vigilance and reform. As the custodian of India's constitutional order, it is high time that the judiciary acted and imposed necessary checks on the unbridled exercise of power by the executive. Courts should use international law to counter the nationalist-populist discourse. Any justification for a demolition drive, as a penal consequence to a criminal act is totally against established canons of criminal justice.

The conduct of demolition drives, as a retaliatory measure, even with the avowed object to curb violence is a clear act of subversion of the principle of rule of law. It is predicated on the critical assumption that the Supreme Court currently has the will and willingness to face the major challenge of the executive branch flouting the rule of law through a nationwide pattern of home demolitions. If that premise is correct, the question then becomes how to articulate the constitutional infringement and how to create a remedy, given the facts outlined in the context of the discussion. It is high time for Supreme Court to come forward and lay down pan-India guidelines on demolition of properties.

References

[1] Author Dr. U.P.D. Kesari, Administrative Law, 21st Ed. 2016

[2] Author Yashomati Ghosh, Textbook on Administrative Law, 1st Ed. 2016

[3] T.N. Godavarman Thirumulpad v. Ashok Khot (2006) 5 SCC 1.

[4] "Common Sense", Thomas Paine <<https://www.gutenberg.org/files/147/147-h/147-h.htm>

[5] Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2295; SP Gupta v. Union of India, AIR 1982 SC 149

[6]<https://www.drishtias.com/daily-updates/daily-news-analysis/demolition-drive-and-rule-of-law>

[7]Jamiat ullema hind V. North Delhi Muncipal Corp. Writ petition civil no.295/2022

[8]<https://www.google.com/amp/s/www.scconline.com/blog/post/2024/09/18/no-demolition-across-country-till-oct-1-supreme-court-against-bulldozer-action/amp/>

[9]<https://www.scconline.com/blog/post/2024/09/03/sc-proposes-frame-pan-india-guidelines-against-bulldozer-action-property-accused/>

[10]Jamiat Ulama I Hind v. North Delhi Municipal Corporation, Writ Petition (Civil) No. 295/2022, decided on: 02-09-2024

[11]<https://english.varthabharati.in/india/supreme-court-orders-status-quo-on-assam-demolition-drive>