

THE ARBITRARY ACT OF STATE “DEMOLITION DRIVE” ARE WE HEADING TOWARDS DICTATORSHIP REGIME

Shailendra Singh* & Dr. Mahesh Prasad**

ABSTRACT

It is a really significant and current matter of national relevance, with municipal authorities attempting to demolish commencing in certain states and the nation's capital, preventing people from going to court, and you have a good legal right to do so. Without adequate notice, intimation, or compensation, the government, municipal authority, or government contractor cannot demolish a building or a portion of a building. The government issues a notice, and only after receiving compensation in the form of a check may the building be demolished. If there is no notice, you can consult an advocate and file a Writ Petition in the High Court after making a submission to the government and basing your decision on the government's response or lack thereof. Then you will be able to obtain appropriate justice in this matter. However Cases of demolition are now being handled on an individual basis. The court may only infer that collective punishment has become an unofficial aspect of state policy based on the pattern of home demolitions. This article scrutinizes about the Arbitrary Act of State “Demolition Drive” Are we heading towards dictatorship regime. In India, there is a major crisis of bulldozing justice, where houses are being razed arbitrarily to punish alleged criminal offence with no legal basis.

Keywords: UDHR, ICESCR, Writ, Audi Alteram Partem, Municipal Laws, Rule of Law, Unconstitutional .

*Ph.D. Research Scholar, Jiwaji University Gwalior

**Assistant Professor (Law), Govt. Shrimant Madhav Rao Scindia P. G College, Shivpuri, Madhya Pradesh.

"The second thing we must do as to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions."

Quoted by Dr. B.R. Ambedkar¹

I. INTRODUCTION

A common pattern has emerged in the current spate of property demolitions carried out at the request of numerous state authorities. A protest occurs in a neighborhood or locality, and it becomes violent. Soon after, the authorities announce that a specific person or group of people has been identified as the "masterminds" of the violence. Following that, the municipality states that these people are living in illegal structures (sometimes with backdated notices of dubious provenance, as in the most recent case). Citizens have a legal right to protect themselves from demolition by filing a civil suit or writ petition before the Hon'ble High Court restraining the municipal authorities and government contractor from demolishing the building/partial property, even if it is an emergency, for out of order petition in civil court or lunch motion or house motion before the Hon'ble High Court for urgent relief since they have been residing in the building for more than 30 years and the law provides right for protection.² The government cannot demolish your property without first giving you notice. In *Sudama Singh & others vs. Government of Delhi 2010*,³ the Delhi High Court held that before any eviction, it was the duty of the State to survey all those facing evictions and to plan a rehabilitation plan in consultation with the "persons at risk".

The Court established procedures to be followed before and after slum demolitions in this case. The Court specifically held that a government agency can only clear land if it serves a public purpose, that a survey must be conducted to determine eligibility for relocation prior to demolition with "meaningful engagement" of residents, and that all eligible beneficiaries must be informed of relocation options prior to

¹ Lessons for India's Democracy: Dr. B. R. Ambedkar offered a frighteningly accurate message about the risks to Indian democracy in his final speech before India's Constituent Assembly on November 25, 1949. <https://www.readersdigest.in/conversations/story-lessons-for-indias-democracy-126370> (Visited on 12 June 2022)

² Namarata Shukla: "Unauthorized Construction And Encroachment" (2016) First edition

³ WP (C) 7317 and 8904/2009 Decided On: 11.02.2010 https://www.hlrn.org.in/documents/Sudama_Singh_and_Ors_v_Government_of_Delhi.pdf (Visited on 13 June 2022).

demolition. The decision has reignited debate in the capital about the legitimacy of forced evictions and removals. At least 200,000 families have been displaced by illegal demolitions carried out under the pretense of municipal beautification and development since 2006. The Court found that housing was critical to human well-being and physical, mental, and emotional development, applying a broad definition of the right to shelter. Finally, the Court determined that the right to shelter is included in the constitutional right to life (Article 21 of Constitution of India)⁴. It also cited a number of international documents that recognize the state's legal obligation to support the right to shelter (e.g., Article 25(1) of the Universal Declaration of Human Rights⁵ and Article 11 of the International Covenant on Economic, Social, and Cultural Rights⁶). The Court followed the CESCR's interpretation of General Comment 7,⁷ which viewed forceful evictions as a violation of the ICESCR, and the Commission on Human Rights' interpretation of such evictions as a violation of human rights. The authorities have no legal basis in India to demolish the homes of anyone accused of taking part in rioting. It is illegal to penalize someone for one claimed offence with a law intended for another.

II. LEGALITY OF DEMOLITIONS DRIVE BY THE STATE ON PROPERTIES OF ALLEGED OFFENDERS AS A PENALTY FOR CRIMINAL OFFENCES

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

⁴ Constitution of India. Article 21: Protection of life and personal liberty.

<https://indiankanoon.org/doc/1199182/> (Visited on 13 July 2022).

⁵ Universal Declaration of Human Rights (1948) Article 25(1): "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care..." <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Visited on 14 July 2022).

⁶ International Covenant on Economic, Social and Cultural Rights (1966) Article 11: "The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (Visited on 14 July 2022).

⁷ CESCR General Comment No. 7 "The right to adequate housing (art. 11.1 of the Covenant): Forced evictions". <https://www.escr-net.org/resources/general-comment-7> (Visited on 14 July 2022).

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 *suo motu* 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.

III. UNCONSTITUTIONAL ACTS AND DEMOLITION OF THE RULE OF LAW

Both the legislative assembly of Uttar Pradesh and Madhya Pradesh recently passed legislation allowing for the recovery of damages to property caused by public order incidents. Neither the legislation nor the Supreme Court decisions mentioned previously mention anything about the offenders' property being destroyed.¹⁰ Each state has different municipal laws regarding the usage of government and private land; in case these laws are violated to build illegal encroachments, such laws

⁸ Indian Penal Code: Chapter VIII – Of Offences Against the Public Tranquility. https://devgan.in/ipc/chapter_08.php (Visited on 14 July 2022).

⁹ WRIT PETITION (Crl.) NO. 77 OF 2007 <https://indiankanoon.org/doc/169453366/> (Visited on 14 July 2022).

¹⁰ The Wire: "Illegal Home Demolitions Are Now State Policy. Here's what the SC can do"

<https://thewire.in/law/bulldozer-legal-supreme-court> (Visited on 14 July 2022).

generally do allow the demolition of such encroachments. However, these laws prescribe a set process for the municipal authorities to deal with illegal encroachments, and their demolition is only prescribed as a last resort action, when all other steps in the process have been unsuccessfully extinguished. Following that, the structures (houses) are demolished. In a normal situation, the time between the police claiming that the masterminds behind the violence have been identified, the municipality declaring that the buildings are illegal, and the actual demolition is less than 24 hours. As officials in Prayagraj, Uttar Pradesh bulldozed the home of a prominent politician and activist, many questioned the constitutionality of such bold action, pointing out that the community aspect of it was plain to observe.¹¹ Member of Parliament Shashi Tharoor said on Facebook that he was "shocked" to receive a video of former Jawaharlal Nehru University (JNU) student activist Afreen Fatima narrating the demolition of her house in Prayagraj. This *modus operandi* contradicts both local and municipal rules, the rule of law, and the constitution on its own terms that is, even assuming that the motivation for the demolitions is illegal structures rather than collective retribution. The responsibility of serving notice and providing a notice period before demolishing an illegal structure is a fundamental tenet of all municipal legislation. For instance Rule 12 of the Madhya Pradesh Bhumi Vikas Rules 1984,¹² Section 248 of the Madhya Pradesh Land Revenue Code, 1959,¹³ Section 308-A of the Madhya Pradesh Municipal Corporation Act, 1956, Section 343 of the Delhi Municipal Corporation Act, 1957,¹⁴ National Policy on Urban Street Vendors, 2009,¹⁵ the Government of National Capital Territory of Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme, 2019,¹⁶ Sections 10 and 15 of the Uttar Pradesh (Regulation of Building Operations) Act, 1958,¹⁷ and Section 27 of the Uttar Pradesh Urban

¹¹ Hindustan Times: On 'bulldozer drive' in UP, Shashi Tharoor asks CM Yogi '...under what law?' <https://www.hindustantimes.com/india-news/on-bulldozer-drive-in-up-shashi-tharoor-asks-cm-yogi-under-what-law-101655029463689.html> (Visited on 14 July 2022).

¹² The Madhya Pradesh Bhumi Vikas Rules, 1984 https://www.mcrjn.com/Building_Bye_Laws.pdf

¹³ Madhya Pradesh Land Revenue Code, 1959 (Visited on 14 July 2022). <http://www.boardofrevenue.mp.gov.in/acts/MPLRC%201959%20AMENDED.pdf>

¹⁴ Delhi Municipal Corporation Act, 1957 <https://www.indiacode.nic.in/bitstream/123456789/1410/1/a1957-66.pdf> (Visited on 14 July 2022).

¹⁵ National Policy on Urban Street Vendors, 2009, (Visited on 14 July 2022). https://urbanlex.unhabitat.org/sites/default/files/in_streetpolicy_2009_0.pdf

¹⁶ The Government of Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme, 2019 https://upload.indiacode.nic.in/showfile?actid=AC_DL_64_788_00002_00002_1583754715909&type=notification&filename=scheme.pdf (Visited on 14 July 2022).

¹⁷ Uttar Pradesh (Regulation of Building Operations) Act, 1958 <http://www.bareactslive.com/ALL/UP107.HTM> (Visited on 14 July 2022).

Planning and Development Act, 1973,¹⁸ for example, all require notice to be sent to any violator of the Rules, and also mandates the violator to discontinue the violation within five to thirty days of the receipt of such a notice. Unfortunately, reports from all of the locations where these demolitions took place demonstrate that none of these procedures were followed. Despite the established protocol for dealing with unlawful construction and street vendors, the authorities' decision to crush and destroy the vendors' merchandise and personal property without warning, rather than moving or even confiscating them can only be described as cruel.

IV. CONCLUSION

Unfortunately, the speed with which demolitions are carried out ensures that even when judicial intervention is sought; it is often too late to achieve anything meaningful, as proven by the demolitions in Uttar Pradesh, Madhya Pradesh, and New Delhi. Even worse, when demolitions take place distant from the nation's capital or in places – and communities – where immediate access to courts is substantially more difficult, the situation worsens. This article 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. The court was minded to regard the demolition as an individual state act, which it would dissect for compliance with the law and the constitution, as the New Delhi, Madhya Pradesh, and Uttar Pradesh demolitions revealed. A specific case of home demolition, on the other hand, is not an isolated incident, but rather part of a larger pattern of state-sanctioned collective punishment.

This is critical because the court can only draw the conclusion that collective punishment has become an unofficial aspect of state policy based on the pattern of home demolitions. After all, a single occurrence could be considered a coincidence; nevertheless, when the same thing – police identification, municipality statement, demolition – occurs again over time and space, it becomes clear that it is official policy. "The bulldozer recognizes no legal nuances and niceties... At the moment, as a republic, we are bulldozing over the fundamental spirit of the law,"

¹⁸ Uttar Pradesh Urban Planning and Development Act, 1973
https://www.indiacode.nic.in/bitstream/123456789/10587/1/the_uttar_pradesh_urban_planning_and_development_act%2c_1973.pdf (Visited on 14 July 2022).

says the bulldozer. Although father and daughter's political opinions may differ from those of others or the government, they are free to have and express them in public - as long as they do not contain urges to disobey the law.¹⁹ So, what is the solution, and what can citizens do about it? Because governments rarely control their own undemocratic tendencies, we, as citizens, must be particularly vigilant of the gradual erosion of our civil freedoms and must raise tough questions of our government and hold it accountable.

¹⁹ The New Indian Express: "Bulldozer justice is illegal, immoral and unjustifiable" <https://www.newindianexpress.com/opinions/editorials/2022/jun/14/bulldozer-justice-is-illegal-immoral-and-unjustifiable-2465320.html> (Visited on 14 July 2022).