



## Bulldozer Justice in India

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### ABSTRACT

It is a significant matter of national relevance as the state governments are demolishing the properties of criminals or suspects. This is done to provide instant justice based on the principle that justice delayed is justice denied. In the name of instant justice, no due process is followed. Without following due process of law, the government or municipal authorities cannot demolish any property, whether constructed in compliance with rules and regulations or not. This act not only undermines the rule of law but also perpetuates existing inequalities. This article scrutinizes the arbitrary act of state government, its legality, impact, and contradiction with settled principles of rule of law, natural justice, and the presumption of innocence until proven guilty.

Keywords: Audi Alterem Partem, Rule Of Law, Natural Justice, Justice Delayed Is Justice Denied, Justice Hurried Is Justice Buried.

### INTRODUCTION:

In some regions of India, the controversial practice of “Bulldozer Justice” has been adopted to deal with criminal activities. It is also referred as “Bulldozer Politics.” In this heavy duty machine is used to demolish the property of criminals or suspected persons, most often without pursuing the prescribed legal procedures and going beyond the basic principles of natural justice. It also raises concerns about the role of the judiciary. However, as each state provides a set of guidelines for municipalities to follow when it comes to property demolition, these actions are illegal and in violation of the rule of law.

### ORIGIN IN INDIA

It all started with the speech of CM Yogi Adityanath in 2017, in which he said that “*my government will bulldoze houses of anyone even thinking of perpetuating crime against women and weaker sections of society.*”<sup>1</sup> Thereafter, several properties of criminals and various gangsters were demolished by Uttar Pradesh government. In result of this he also earned a nickname “Bulldozer Baba.” Madhya Pradesh Chief Minister also termed as “Bulldozer Mama” after the alleged demolition activities in the state following a communal clash. Even the BJP MP from Mathura, Hema Malini, said that “*nothing can come in front of a bulldozer*”<sup>2</sup> after the party crossed the majority threshold in 202 assembly constituencies in Uttar Pradesh.

### BUT WHAT’S THE PROBLEM IN TAKING SUCH ACTION

It brings forth following issues: Firstly, is there a place for such demolitions in the IPC? Is it legal for a state to destroy the property of someone even if it was built adhering to the rules and regulations? Second, would it not be regarded an infringement on the judiciary’s domain? Thirdly, is it not against the idea of the rule of law? Fourthly, is it because justice has been delayed? Fifth, does it not infringe upon the accused and his family’s fundamental rights? The answers to all these questions are given below.

#### Does this find place in IPC?

According to Section 53, Chapter III, Indian Penal Code, 1860 (IPC) there are 5 kinds of punishment: Death, Imprisonment for life, Imprisonment (rigorous, that is, with hard labour or simple), Forfeiture of property and Fine.<sup>3</sup>

Thus, IPC nowhere provides for demolition of properties as a punishment. Therefore, demolition of properties of accused or suspected persons even when properties are duly constructed and even if not duly constructed without providing opportunity of hearing amounts to following the retributive theory of

<sup>1</sup> Shukla, Sravan. DNA INDIA. [Online] SEPTEMBER 06, 2017. [visited: SEPTEMBER 22, 2024.] <https://www.dnaindia.com/india/report-will-bulldoze-your-houses-even-if-you-think-of-crime-yogi-adityanath-s-warning-to-mafia-2543520>

<sup>2</sup> . TIMES OF INDIA. *TIMES OF INDIA*. [Online] MARCH 10, 2022. [visited: SEPTEMBER 23, 2024.] <https://timesofindia.indiatimes.com/india/nothing-can-come-in-front-of-a-bulldozer-says-hema-malini-after-bjps-win-in-up-polls/articleshow/90124270.cms>

<sup>3</sup> .Indian Penal Code, 1860, Section 53, Act no. 45 of 1860

punishment. Essentially, the retributive theory of punishment accepts the “an eye for an eye” (Lex talionis) doctrine. In this theory, society feels satisfied as the criminal receives proper and direct punishment for the crime that he committed without any presumption of innocence..

Nevertheless, there are limitations to this approach. The application of this philosophy often ends in severe punishments. Vengeance is a negative feeling that people in a community may develop, and when this happens, the state may start acting in an arbitrary way.

The “Theory of Rehabilitation”—a reformatory concept of punishment—comes next. The distinctive feature of this concept which sets it separate from others is its focus on rehabilitation of offenders as a law-abiding member of society by changing their state of mind. Rehabilitation aims to alter a criminal’s thoughts and actions so as to discourage future crimes. Lowering the rate of recurrence is the primary purpose of this concept.

Since gaining independence, India has embraced the reformatory concept of punishment. The basic principle of “abhorring crime, not the criminal” governs every aspect of the Indian criminal justice system. It is regarded as a process of change wherein an offender erases his wrongdoings by changing his nature. Also, the fundamental principle of “Let go of a hundred guilty, rather than punish an innocent” is the basis of our judicial system. Therefore, without trial conducted by a Court of law an innocent person may get punished, which amounts to highest form of injustice.

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## DUE PROCESS

Article 21 of Constitution provides that *No person shall be deprived of his life or personal liberty except according to procedure established by law.*<sup>4</sup>

Firstly, Article 21 of the Constitution makes it clear that no person can be deprived of his life and personal liberty. The person here includes the accused and his family as well. After the landmark judgment of *Maneka Gandhi vs. Union of India*<sup>5</sup>, the scope of Article 21 has been enlarged. Life here does not mean mere animal existence or protection from death or physical injury. It includes a right to life with dignity as well as a right to shelter despite the fact that someone is an accused. This right is available to all persons, whether citizens, non-citizens, under-trial prisoners, accused or convicts. Thus, the state can’t violate their rights merely because the person is under trial, accused or a convict, as they don’t cease to be a person under Article 21.

Secondly, Article 21 makes it clear that the right to life and personal liberty can be taken away only by the procedure established by law. The procedure established by law includes not only a procedure provided by law but due process of law as well. Due process or due procedure is a procedure that must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable. In the heart of due procedure of law lies the concept of natural justice. The rule of natural justice includes *Audi Alterem Partem*, i.e., right to be heard. The rule of *Audi Alterem Partem* is prescribed in all the municipal legislations of states, which means that it includes serving a notice and providing a notice period before demolition activity is carried out to remove illegal and unauthorized structures. For example Section 248 of the Madhya Pradesh Land Revenue Code, 1959;<sup>6</sup> Section 308-A of the Madhya Pradesh Municipal Corporation Act, 1956;<sup>7</sup> Section 343 of the Delhi Municipal Corporation Act, 1957<sup>8</sup> etc. However, almost in all areas where such demolitions took place show that not even a single protocol was followed by the state. It can only be considered arbitrary as the authorities choose to demolish and destroy the individuals (accused or not) personal property without any opportunity of hearing, in spite of the established protocol for dealing with illegal constructions.

Thirdly, it is not so that the government cannot demolish private properties. But it can be done only when such properties are in violation of rules and regulations and not as a punishment in the name of instant justice, and for that also a settled procedure is provided in each state that has to be followed.

Despite the settled procedure to deal with unauthorized and illegal properties, the decision of authorities to demolish such properties without following the settled procedure amounts to a violation of due procedure of law, as when a procedure is provided that is just, reasonable, and fair, it must be followed while keeping in mind the principles of natural justice.

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## WHICH RIGHTS ARE VIOLATED BY SUCH DEMOLITION ACTION ?

### Right to shelter

In *P. G. Gupta v. State of Gujarat*<sup>9</sup>, a bench of three judges of this Court considering the mandate of human right to shelter read it into Article 19(1)(e) and Article 21 of the Constitution of India to guarantee right to residence and settlement.

For every human being, it is necessary to have suitable accommodation so that he and his family can grow in every aspect. The right to shelter includes adequate living space as well as a safe and decent structure. Thus, the right to shelter is an essential requisite to the right to life. When someone’s (whether

<sup>4</sup> .Constitution of India, 1950, art 21

<sup>5</sup> .*Maneka Gandhi v.Union of India & Ors.* Writ Petition No. 231 of 1977, Supreme Court, 1978 AIR 597.

<sup>6</sup> .Madhya Pradesh Land Revenue Code, 1959. [Online] [visited: September 23, 2024.] [https://boardofrevenue.mp.gov.in/acts/Act\\_MPLRC\\_1959\\_0020\\_Pdf\\_F95\\_English.pdf](https://boardofrevenue.mp.gov.in/acts/Act_MPLRC_1959_0020_Pdf_F95_English.pdf).

<sup>7</sup>.Madhya Pradesh Municipal Corporation Act, 1956 [Online] [visited: September 23, 2024] <https://www.indiacode.nic.in/bitstream/123456789/3582/1/Municipal%20Corporation%20ACT1956.pdf>.

<sup>8</sup> .Delhi Municipal Corporation Act, 1957, section 343, Act no 66 of 1957

<sup>9</sup> . *P. G. Gupta v. State of Gujarat* 1995 (2) SCC 182; 1995 SCC(L&S) 782; 1995 (30) ATC 47; 1995 (2) JT 373

accused or not) property is demolished without following due procedure of law, it not only violates the right to shelter of that accused but also of his entire family who lives with him.

### International rights

**Article 25(1), Universal Declaration Of Human Rights** declares that everyone has the right to a standard of living of adequate health and wellbeing for himself and his family, including food, clothing, housing, medical care, and necessary social services.<sup>10</sup> Furthermore, **Article 11(1), International Covenant of Economic, Social, and Cultural Rights, 1996**, also declares that the state parties to the covenant to recognize the right of every one to an adequate standard of living for himself and his family, including food, clothing, housing, and the continuance improvement of living conditions.<sup>11</sup>

### Rule of law

The concept of rule of law was developed by Albert Venn Dicey (a British jurist and constitutional theorist) in his book 'The Law of the Constitution' (1885). He propounded three concepts of it:

1. **Supremacy of law:** It means that law is above all, including the people who are administering it. A rule of law had been constituted in order to promote absolute supremacy of law so that there is no arbitrariness. Therefore any action of state which is arbitrary is directly against the concept of supremacy of law.
2. **Equality before law:** Every individual is subjected to the ordinary law and jurisdiction of the ordinary court, irrespective of their ranks or position. Therefore, everyone is equal before the law no matter whether he is an accused or suspect.
3. **Predominance of legal spirit:** To enforce a rule of law, an enforcing authority is required. Dicey considered courts to be the best enforcing authority without any impartiality or external influence. Therefore it is only Court of law who can decide whether a person is liable for punishment or not.

In India, the requirement of rule of law is fulfilled by our constitution. It is the highest law of the country, and no one is above it. It is illegal to penalize someone for one claimed offence with a law intended for another.<sup>12</sup> It means that a law made for controlling unauthorized and illegal construction cannot be used to punish any person for committing any offence. Furthermore, it is also illegal to penalize the whole family or community for a crime committed by one as it was observed by Bhagwati J. in *Ramana Dayaram Shetty v. The International Airport Authority of India*<sup>13</sup> that "it is unthinkable that in a democracy governed by the rule of law, the executive government or any of its officers should possess arbitrary power over the interest of the individual. Every action of the executive government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement."<sup>14</sup>

### Justice delayed is justice denied

The term justice delayed is justice denied implies that justice is not a reality if it isn't delivered promptly, even if it gets delivered later, as there existed an injustice when justice was demanded. However, this does not imply that the accused must be punished right away and that justice must be served straight away in every case as instant solutions may result into injustice.

When a decision is rendered at a suitable time, it will be pronounced lawfully and with fairness. In every instance, the court has to have appropriate time to scrutinize all the evidences before declaring convictions and judgments. It is regarded as true justice. Thus saying "justice hurried is justice buried" is equally true to the extent as "justice delayed is justice denied."

Therefore, the requirement for natural justice and the balance of convenience is that every person should receive an adequate, reasonable, and due hearing.

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## RECENT JUDGEMENTS

In a judgment of year 2019 Supreme Court underscored the need of due procedure in carrying out demolition activity. It was also observed by Supreme Court that the exercise of power of demolition which affects the property of the citizen of this country must be exercised in an absolutely fair and transparent manner.

In *Radha Langri and Anr v. The Commissioner, Municipal Corporation Ujjain and Ors*<sup>15</sup>, Madhya Pradesh high court observed that "it has become fashionable now for local administration and local bodies to demolish any house by drawing up proceedings without complying with the Principal of

<sup>10</sup> . Universal Declaration Of Human Rights, 1948, Art 25(1)

<sup>11</sup> . International Covenant of Economic, Social, and Cultural Rights, 1996, Art 11(1)

<sup>12</sup> . Shailendera Singh & Dr. Mahesh Prasad, The Arbitrary Act Of State "Demolition Drive" Are We Heading Towards Dictatorship Regime, DNULR, PG 195

<sup>13</sup> . **Ramana Dayaram Shetty v. The International Airport Authority Of India, 1979, 3S.C.R 1014**

<sup>14</sup>.Id.

<sup>15</sup> .*Radha Langri & Anr v. The Commissioner, Municipal Corporation Ujjain and Ors*, Writ Petition No. 744 of 2023, Madhya Pradesh High Court, 2024.

Natural Justice and publish it in the newspaper. It appears that in this case also the criminal case was registered against one of the family members of the petitioners and demolition activities were carried out.<sup>16</sup>

In recent case of Javed Ali Maheeb Miya Saiyed v. State of Gujarat & Ors<sup>17</sup> while passing an interim order against bulldozing properties Supreme Court observed that “in a country where action of state are governed by the rule of law, the transgression by a family member cannot invite action against other members of the family or their legally constructed residence. Alleged involvement in crime is no ground for demolition of a property. Moreover the alleged crime has to be proved through due legal process in a Court of law. The Court cannot be oblivious to such demolition threats inconceivable in a Nation where law is supreme. Otherwise such actions may be seen as running a bulldozer over the laws of the land.”

Further in the case of Jamiat Ulama I Hind v. North Delhi Municipal Corporation<sup>18</sup> while staying demolition activities in the country the apex court propose to lay down certain guidelines on a pan India basis for dealing with demolition activities.

### Conclusion

It is obvious that bulldozer justice suffers numerous significant problems. It not only promotes disparities by targeting marginalized and minority communities, but it also undermines the rule of law and due process. Bulldozer justice frequently violates fundamental human rights, such as the right to shelter and protection from arbitrary state measures, by eroding public trust in political institutions. The inappropriate retribution inflicted on the accused is also against the principle of innocent until proven guilty. Therefore, the liability must be imposed on state governments for arbitrary use of power. Demolition can take place only on the grounds mentioned in municipal laws and after following the procedure provided therein. Given the state governments neglect for judicial principles, it is essential that the judiciary intervene to maintain the basic principle of “checks and balances.” Thus, the step taken by the apex court for the formulation of guidelines for demolitions in such cases is a very much needed step, as an eye for an eye will make the entire world blind.

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<sup>16</sup>. Id.

<sup>17</sup>. Javed Ali Maheeb Miya Saiyed v. State of Gujarat & Ors, 2024. Writ Petition (Civil) Diary No (s). 41707/ 2024, Supreme Court, 2024.

<sup>18</sup>. Jamiat Ulama I Hind v. North Delhi Municipal Corporation Writ Petition No.295 Of 2022