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Constitutional Validity of Bulldozer Justice: A Legal Analysis

Authored By - Nikhil Biju

Introduction

India is the second most populous country today and by 2023 she is going to by-pass China to become the world's most populated country. Though she has a decent economic growth, especially during the past three decades, India has not succeeded in assuring basic infrastructure and amenities to large sections of her population. Growing wealth and income inequality between the rich and the poor and rising concentration of wealth in few hands are adding to the plight of majority of the people. The most visible form of this inequality is in the quality of structures in which they reside. Palatial bungalows standing alongside thousands of tiny makeshift shacks is a very common sight in most parts of the urban landscape across the country. Most of these temporary shelters are illegal constructions which poses serious challenges to urban planning.

The aim of this study is to discuss the legal and human rights issues arising out of the efforts to control the problem of illegal structures in urban locations. Allegations of discriminatory treatment towards certain religious groups and sections of the population often makes it to the headlines of national media and causes irreparable harm to the secular fabric of the nation. In this context the study proposes the formulation of a uniform legislation on demolition of illegal structures in India as a solution. It also explores the feasibility of viewing the issue of illegal constructions and evacuation in the light of right to shelter under Article 21 of the Constitution.

Urban planning in India

In order to fully understand India's institutional framework for urban planning, the following questions must be addressed: Who is in charge of city planning? Why are India's rules and procedures governing urban planning structured the way they are? The answers to these questions should be identified for resolving the existing problems of India's urban town planning and the key focus here is on illegal constructions.

Town and Country Planning Organization (TCPO) formulated the Model Town and Country Planning Law in the year 1960. This model Act was revised by TCPO in year 1985 as “Model Regional and Town Planning and Development Law” to enact a comprehensive urban and regional planning legislation in all the States and Union Territories (UT’s)¹. The main contents include;

- Constitution of State Regional and Town Planning Board by the State Governments for the purpose of advising on the delineation of the region for planned development
- Directing the preparation of metropolitan, regional and area plans by the metropolitan, regional and area planning and development authorities
- Setting up of metropolitan, regional and area planning and development authorities for different urban and rural areas within the State to undertake preparation of development plans and to enforce and implement them
- Coordinating the planning and implementation of physical development programmes

The authority who determines a construction to be illegal is the development authority of that particular state. But the way these development authorities function are so complicated and this make the ‘Master planning’ of the cities a herculean task. For instance, the Delhi Development Authority (DDA) is established by Delhi Development Authority Act of 1957. The functioning of DDA is very complex because of the complicated and overlapping governance landscape of Delhi. DDA is performing the duties of local, state and central government body. Even though DDA is a central agency, along with Municipal Corporation of Delhi it has to do the functions of a local authority. After making Delhi as a new state under the Government of National Capital Territory of Delhi Act, 1991 some functions of the DDA are now shared with the Government of the National Capital Territory of Delhi (GNCTD).

This is not just a problem with Delhi alone and many other cities and towns are facing similar issues. Though the 74th Constitutional Amendment was passed three decades back, still some of the duties made for certain purposes under the law is not implemented by urban local bodies. Duties such as planning for economic and social development, urban poverty elimination, health, water supply, slum improvement and upgradation are all areas where proper planning and implementation is lacking.

¹ SHAHANA SHEIKH & BEN MANDELKERN, THE DELHI DEVELOPMENT AUTHORITY ACCUMULATION WITHOUT DEVELOPMENT (2014)

Waterlogging and flooding in cities and urban areas across the country is mainly attributed to lack of proper town planning. It can be undoubtedly said that the Chennai floods of 2021 was a direct result of improper town planning. Chennai Municipality Development Authority is responsible for the planning in the city. Slum improvement and upgradation instead of being under the urban local body comes under the purview of the Tamil Nadu Urban Habitat Development Board. The Board does not include any of the elected members of the local administration thereby minimizing people's participation in implementing the housing programs for vulnerable sections. Similarly, urban planning and financing is controlled by parastatal agencies like the Tamil Nadu Urban Infrastructure Trustee company Ltd. and Tamil Nadu Urban Finance and Infrastructure Development Corporation. The programs that are planned could not be implemented due to lack of funds. When there are multiplicity of governance structures and no uniformity in procedures, timely and proper implementation becomes so complex and almost impossible. The sharply divided discussions and debates on razing to earth illegal structures and tenements in several parts of the country has to be seen in this backdrop.

The 'bulldozer' politics has become a new buzzword in the Indian political setup where one political party has been advertising it as a symbol of its commitment to sound law and order situation in the states governed by it.² This 'bulldozer' model of governance, is a violation of basic human rights and international law. Streaming of news in the mass media alongside visuals of flag march of police, bulldozers and police vehicles has become a common sight. This happened in several parts of the state of Uttar Pradesh and it is alleged that this was an attempt from the side of the government to instil fear in the minds of people, especially youth, to curb any protest that might arise as a result of declaration of *Agnipath* Scheme which was facing criticism.

Current Scenario

Demolition of illegal constructions are often projected by the concerned Governments as 'anti-encroachment' drives. Many such instances were reported in media recently. For example, in Nagoan District of Assam, the administrative authorities of the State demolished the houses of people who were suspected of setting a police station in fire. Constructions from which taxes

² Usha Ramanathan, *Demolition Drive*, 40 ECONOMIC AND POLITICAL WEEKLY 2908–2912 (2005), <https://www.jstor.org/stable/4416843> (last visited Nov 22, 2022)

were collected for a very long period of time were suddenly dubbed as illegal constructions when they become accused or suspect in any anti-government activities. Similarly in several parts of the country where communal clashes occurred during Ram Navami festival, news of anti-encroachment drive followed. One famous example would be the Central government controlled North Municipal Corporation of Delhi (MCD) sending a letter to the Deputy Commissioner of police for protection during the anti-encroachment drive that was to happen on April 20 and 21 after a communal clash was reported from the place. But this was stopped by the Supreme court by an order. Soon in the second week of the next month south MCD decided to go on with their Anti-Encroachment Drive which was stopped as a result of large protest that emerged.

The demolition of house of Parveen Fathima, wife of Mohammad Javed who criticized the speech of BJP spokesperson against prophet Mohammad, also got widespread media attention. In this case the “general mandamus” which was issued by Allahabad high court in *Abbas Ansari and Another v State of U.P. and 3 Others* was not complied. The Allahabad High Court ordered the general mandamus after noticing that numerous instances were being brought before the court complaining about demolitions taking place even before the deadline for filing an appeal had passed. The court said that it was issuing the "general mandamus" in light of the Supreme Court's categorical ruling in *Chairman, Indore Vikas Pradhikaran v Pure Industrial Coke & Chemicals Limited and Others* (2007), which considered the nature of town planning statutes in relation to the rights of citizens to live. The Court reminded that a public authority may have general considerations, safety or general welfare in mind, but at the same time it should not forget the lawful rights of the party.³ In several instances structures for which government had been collecting taxes were demolished alleging that they are illegal. Such instances raises the suspicion that political or social motives are present behind such demolitions

Urbanization and illegal Structures

The real reason behind the emergence of illegal structures in India is the growing urbanization in the country. Those who live in the so-called illegal structures are poor people. The rich and the upper middle class usually don't face the threat of eviction or demolition. The approach which government should take is to rehabilitate these people living in these illegal structures

³ Venkitesh Ramakrishnan, *Targeted demolitions: Uttar Pradesh back to bulldozer tactics yet again*, FRONTLINE, Nov. 21, 2022

and not to destroy them and send them to streets to suffer. One important advantage of taking care of these illegal structures is that by giving them proper housing facility many long standing issues which the governments were trying for decades can be solved easily. Clean drinking water, sanitation, hygiene etc. will improve if the state starts working on these lines. Money that has been used for these things can now be diverted for ensuring proper housing facility. There will additionally benefits like reduction in water pollution, overall improvement of health indices of the population, etc.

Approach of Judiciary

The approach of judiciary regarding the demolition of alleged illegal structures is widely criticized. In a democratic country like India, it should be the judiciary who should confine the executive when their actions cross legal limits. But when the houses of hundreds of people were demolished, especially that of Muslims on a wide scale across India, the Supreme Court actually did nothing. This trend was followed in states like Uttar Pradesh, Madhya Pradesh, Delhi etc where people who protested were targeted. Even though a petition was filed by Jamiat Ulama -I- Hind the Supreme Court made no intervention even though it was crystal clear that the state actions violated principles of natural justice like right to be heard, right to prior notice etc. The Court did not even take any effort to issue an interim order to stop this state sponsored atrocities. The response of the Court was to evade the case like how it was doing in the past such as in electoral bond issue, demonetization issue etc.⁴

The landmark judgment of the Supreme Court in *Olga Tellis v Bombay Municipal Corporation*.⁵ held that Article 21 which guarantees right to life also includes right to housing and livelihood. In its 2010 ruling in *Bal Kishan Das v Municipal Corporation of Delhi*, the Delhi High Court declared that issuing the parties with a show-cause notice is a compulsory requirement. In *Sudama Singh and others v Delhi government and others*, the court had ruled that before government officials decide to evict someone from their home, they must provide for an alternate residence with basic civic amenities that preserve the person's right to life and dignity.

⁴ Thulasi K. Raj, *Is the judiciary failing to put a check on excesses of the executive?*, FRONTLINE, Nov. 12, 2022

⁵ *OLGA TELLIS AND OTHERS V. BOMBAY MUNICIPAL CORPORATION AND OTHERS*, 3 SCC online

In principle, every municipal body is mandated by law to give notice to the parties before attaching or causing any damage to their property. Prior to the demolition of any building, notice must be issued to the parties, according to Section 343 of the Delhi Municipal Corporation Act, 1957. Additionally, it specifies that the occupant must be given 5–15 days' notice before the commissioner personally orders the building's demolition. No order of demolition may be issued, according to the proviso of the Section, unless the person has been given a reasonable opportunity to object by way of a notice provided in a manner the commissioner deems appropriate.

Similar to this, the Madhya Pradesh Bhumi Vikas Rules, 1984 compel the authorities to issue a notice to the person who is allegedly breaking these rules, giving the perpetrator ten days to cease the infringement.

The Central Government came out with a National Housing Policy in 1988. The policy was revised in 2007 and right now, National Urban Housing and Habitat Policy 2007 is in operation.⁶ This policy recognizes right to shelter as a basic need. The policy also recognizes the correlation between shelter and development and it gives special emphasis to urban poor. These are the people who are most vulnerable compared to rural poor. If the action plans mentioned under the policy such as preparation of 15-20 years perspective plans in the form of City Development Plans (CDPs) based on spatial planning at the city level had been implemented flawlessly, the construction of illegal buildings would have been extremely difficult task and could solve the problem in the initial stage itself. Later, with the help of Local development authorities, proper housing facilities can be arranged.

International Scenario

Issues around demolition of illegal structures is not just something which is happening in India. This has been a practice which is being followed by several governments across the world to tie up the mouths of their enemies. This has happened in Palestine, Pakistan etc. in the past and one important example which can be analyzed here is the issue of demolition of homes of Arab nationals in Israel by the municipality. Buildings of Arabs are targeted there and are demolished saying they are illegal buildings. Government there says the excuse that they are doing this to

⁶ S.P. Sathe, *RIGHT TO SHELTER : REVIEW OF HOUSING LAW AND POLICY IN MAHARASHTRA*, 35 JOURNAL OF THE INDIAN LAW INSTITUTE 13–33 (1993), <https://www.jstor.org/stable/43952323> (last visited Nov 22, 2022)

protect 'public order' and peace, there by demolishing them because they can collapse or cause inconvenience to others.⁷ After the continued protest by NGO's and the Arabs, the local authorities started resorting to new ways of demolitions. The authorities issue orders to demolish the buildings and if the house owner fails to do so, he may be compelled to pay \$ 25,000 to the municipal contractors. The legal compulsion make the Arabs demolish their own homes and thereby avoid international attention and legal hurdles.⁸

Right to shelter and Human Rights

Human rights are the basic rights required for the dignified life of any human being. The international community has recognised a set of international norms through the Universal Declaration of Human Rights (UDHR). Article 17 of UDHR provides that everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property. Article 25 provides that 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 and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 11 of the International Covenant on Economic, Social and Cultural Rights recognize 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. The States Parties are also bound to take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Constitution of India

The Constitution of India mandates the State to protect the rights of all citizens. The fundamental rights are enumerated in part three and aspirational goals for development are provided in part four as Directive Principles of State Policy. The fundamental rights are directly

⁷ Justus Reid Weiner, *THE NGOS, DEMOLITION OF ILLEGAL BUILDING IN JERUSALEM, AND INTERNATIONAL LAW*, 17 JERUSALEM CENTER FOR PUBLIC AFFAIRS 47–62 (2005), : <https://www.jstor.org/stable/25834619> (last visited Nov 25, 2022)

⁸ mohammed Najib, *Israel makes Palestinians destroy their own homes*, ARAB NEWS, Aug. 24, 2022

enforceable in the court of law. A close look at Part III and Part IV of the Indian Constitution reveals that almost all of the rights provided in UDHR are covered in these two parts.

Article 21 of the Constitution provides for the protection of life and personal liberty all persons. It provides that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. Several judicial precedents has confirmed that shelter for human beings is not mere protection for life or limb; it provides opportunities to human beings to grow physically, mentally, intellectually, and spiritually. The right to shelter includes adequate space, safe and decent structure, decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities. The right to life guaranteed in any civilized society implies the right to food, water, a decent environment, education, medical care, and shelter.

The Indian government is under an international legal obligation as well as a constitutional obligation to guarantee the right to household to individuals. Article 39 calls upon the state to ensure that both women and men have equal and adequate means of livelihood. Similarly, Article 47 of the Constitution envisions the state to raise the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

Another constitutional provision relevant to the present discussion is Article 300A. It mandates state to ensure that persons are not deprived of property save by authority of law. Right to Property is no longer a fundamental right; rather it is a Constitutional Right. Therefore, the article protects an individual from interference by the State on his property unless it is in accordance with the procedure established by law.

Way Forward

Constitutionally guaranteed rights of citizens and rights guaranteed by international human rights are flouted by the states to seek narrow political gains. A feasible legal measure to protect the rights of citizens, especially those belonging to minority or marginalised communities is to provide for a uniform law to deal with the issue of demolition of illegal structures. Such a law will be very helpful in avoiding all the complexities and ambiguity with respect to the issue.⁹ Provisions can be made in the legislation to ensure a standard time period for giving notice and

⁹ George B. Young, UNIFORM STATE LAWS, 8 American Bar Association Journal 181–183 (1922), <https://www.jstor.org/stable/25710821> (last visited Nov 22, 2022)

a common procedure to be followed by all the states before demolition of any structure which is alleged to be 'illegal construction'. Proper definition for the term 'illegal construction' would be helpful to ensure that the states are not misusing this provision.

Conclusion

To solve this existing crisis intervention from organs of government, i.e., legislature, executive and judiciary is absolutely necessary. Ruling political parties should understand that right to shelter is a basic fundamental right and that such a valuable right cannot be taken away in any arbitrary manner. Analysis of such violations reveals that the actual problem is not the lack of law but is the unlawful implementation of it. This can be avoided by making a uniform law to deal with the issue of 'illegal structures'. Judicial review is one of the important features of our constitution and it cannot be taken away without affecting the basic structure of constitution. So, the higher judiciary is expected to be proactive and to scrutinize government actions. There should be participation of elected representatives in urban planning which is not there right now. Bureaucrats who head offices for urban planning acts in the interest of the respective state governments without giving any consideration to the interest of the public at large. Ensuring elected representatives will uphold the spirit of democracy and would help a much better public scrutiny. The duty of the media, which is hailed as the fourth estate is also significant in this respect. They have the duty to ensure that the voice of the marginalised and the poor reach the higher echelons of power.

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