

DEMOLITION DRIVES VIOLATE INTERNATIONAL LAW

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'The idea of serving 'justice', quick and cold, through bulldozers emanated in Uttar Pradesh.' | Photo Credit: PTI

Communal clashes broke out during Ram Navami processions in several parts of the country including at Khargone in Madhya Pradesh. Subsequently, the Madhya Pradesh government bulldozed the houses of those who were allegedly involved in rioting. The State government claims that these demolitions are in response to illegal encroachments. However, the fact that these arbitrary demolitions are being carried out against the alleged rioters of one particular community and in the immediate aftermath of the riots shows that their purpose seems to be to impose collective punishment.

The bulldozing machines—the new symbols of brute state power — are not just demolishing houses and shops but also bulldozing rule of law and our constitutional order. 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. This process has been further institutionalised through the enactment of the Uttar Pradesh Recovery of Damages to Public and Private Property Act, 2020.

Several commentators have already pointed out that the use of such brute state power violates various domestic legal provisions. Our purpose is to illustrate that the act of bulldozing houses without due process and legal sanction also amounts to a breach of India's international law obligations.

The right to housing is not only a fundamental right recognised under Article 21 of the Indian Constitution, it is also a well-documented right under the international human rights law framework, which is binding on India. For instance, Article 25 of the Universal Declaration of Human Rights (UDHR) states 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...".

Likewise, Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises "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". Furthermore, under Article 11.1, countries are under an obligation to take "appropriate steps" to ensure the realisation of these rights such as the right to adequate housing.

The rights recognised under ICESCR, according to Article 4, can be restricted by States only if the limitations are determined by law in a manner compatible with the nature of these rights and solely to promote society's general welfare. However, any limitation imposed on the rights given in the Covenant such as the right to adequate housing cannot lead to the destruction of these rights. This is categorically recognised in Article 5 of ICESCR.

Besides, international law also prohibits arbitrary interference in an individual's right to property. For instance, Article 12 of the UDHR states that "no one shall be subjected to arbitrary interference with his privacy, family, *home* or correspondence, nor to attacks upon his honour and reputation". Article 12 also stipulates that "everyone has the right to the protection of the law

against such interference or attacks”. This same right is also provided under Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Article 17 further provides that everyone has the right to own property alone as well as in association with others and that no one shall be arbitrarily deprived of his property. Thus, arbitrary interference with an individual’s property is a gross violation of the ICCPR.

The Office of the High Commissioner for Human Rights (OHCHR) commonly known as the United Nations (UN) Human Rights Office — whose mandate is to promote and protect human rights guaranteed under international law — has elaborated on the content of the right to adequate housing.

According to the UN Human Rights Office, an integral element of the right to adequate housing is ‘protection against forced evictions’. Building on the right to adequate housing, given in Article 11.1 of ICESCR, the UN Human Rights Office defines ‘forced evictions’ as ‘permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection’. The right to adequate housing also entails freedom from arbitrary interference with one’s home, privacy, and family.

The bulldozing of the houses by the Madhya Pradesh government of the alleged rioters amounts to forced eviction and arbitrary interference with an individual’s home, thus a breach of Article 11.1 of the ICESCR. This action can be defended under international law only if it can be shown that the forced eviction is as per the law and in conformity with the provisions of the human rights covenants. Also, other requirements such as whether the state action was necessary and proportionate will have to be examined. It is unlikely that these forced evictions can be lawfully defended given the timing of the eviction.

One wonders that if these demolitions were against illegal encroachments, then did the authorities get the eviction order on the day of the riots, or did they have an eviction order earlier, but decided to act only after the riots? Also, were the eviction orders limited to the Muslim locality?

Moreover, the international human rights law identified above has been judicially incorporated by the Supreme Court of India into the Indian legal system. The apex court in cases like *Bachan Singh vs State of Punjab*, *Vishaka vs State of Rajasthan*, and recently in the famous *Puttaswamy vs Union of India* has laid down the principle that the fundamental rights guaranteed under the Constitution must be read and interpreted in a manner which would enhance their conformity with international human rights law.

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.

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