

DEMOLISHING THE RULE OF LAW

Relevant for: Indian Polity | Topic: Devolution of Powers & Finances up to Local Levels and Challenges therein - Panchayats & Municipalities

'Guitar Uncle' Sushil performs at riots- and demolitions-hit Jahangirpuri in New Delhi on April 23, 2022. | Photo Credit: SUSHIL KUMAR VERMA

In the early hours of April 21, a fleet of [bulldozers accompanied by hundreds of policemen descended on Jahangirpuri](#) in northwest Delhi [to demolish](#) buildings, petty shops, and the entrance gate of a mosque. Soon after the demolitions started, the Supreme Court in an urgent hearing ordered that "status quo" be maintained until further orders, but the demolition continued for over an hour after the order was passed.

The demolition drive was initiated after the Delhi BJP chief Adesh Gupta wrote to North Delhi Municipal Corporation (NDMC) to demolish the "illegal constructions" of the rioters in Jahangirpuri. Communal violence had broken out in the area on April 16 when a Hanuman Jayanti Shobha Yatra, which did not have police permission, clashed with Muslims as it went alongside the mosque. This comes on the heels of other incidents, in Khargone in Madhya Pradesh and Khambhat in Gujarat, where processions during Ram Navami led to communal flare-ups which were followed by the state-directed demolition of homes of the alleged rioters.

The actions of state and local authorities to bulldoze shops and homes in riot-hit Muslim neighbourhoods citing "illegal encroachment" raises major legal concerns. At one level, such actions show a blatant disregard for the due process of law and established judicial precedents regarding evictions. At another level, it conveys the cynical use of brute state power for collective punishment undermining the basic tenets of criminal law.

The statement of the NDMC that the demolition was a part of a drive against "illegal encroachments" seems to be a legal smokescreen for its more insidious action. The binary of legal and illegal settlements has very little meaning in Delhi, and much of urban India, since a majority of urban residents live on the margins of legality. According to the Delhi Economic Survey 2008-09, only about 24% of the city lived in "planned colonies" and the rest lived in informal or unplanned areas ranging from *jhuggi jhopdi* clusters to unauthorised colonies. The Draft Master Plan of Delhi, 2041 also acknowledges the informality that characterises Delhi when it states that such unplanned areas have "emerged as high density, mix-use hubs, providing affordable options for housing, micro, small and medium enterprises".

Within the web of such urban informality, people make claims over property through various legal, political, and documentary means. Since the 1970s, there have been many waves of regularisation of "unauthorised colonies" initiated by the state. In the run-up to the Delhi Assembly elections in 2020, the Union Government launched the PM-UDAY (Unauthorised Colonies in Delhi Awas Adhikar Yojana) scheme which confers property rights to residents of unauthorised colonies.

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Irrespective of the legal status of the settlement, no public authority can demolish buildings without giving the affected parties a chance to be heard. Neither the Delhi Municipal Corporation Act, 1957 nor the Delhi Development Act, 1957 allows any authority to demolish a permanent building without serving advance notice. Section 343 of the Delhi Municipal Corporation Act, 1957, which allows the corporation to order the demolition of buildings, has a proviso which

states that “no order of demolition shall be made” unless a notice is served to give the affected person “a reasonable opportunity of showing cause why such order shall not be made”.

Beyond the principles of natural justice, the judiciary has further strengthened the rights of residents against eviction. In *Ajay Maken vs Union of India* (2019), a case concerning the legality of the demolition of Shakur Basti, the Delhi High Court held that no authority shall carry out eviction without conducting a survey, consulting the population that it seeks to evict and providing adequate rehabilitation for those eligible. Invoking the idea of the “Right to the City” and the “Right to Adequate Housing” from international law, the court held that slum-dwellers possess the right to housing and should be protected from forced and unannounced eviction. The Delhi High Court had earlier in *Sudama Singh vs Government of Delhi* (2010), mandated that the state should comply with fair procedure before undertaking any eviction which got further crystallised in the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015.

Drawing from judgments in South Africa, the Delhi High Court in *Ajay Maken* case held that any person who is to be evicted should have a right to “meaningful engagement” with relocation plans. In *Occupiers of 51 Olivia Road, Berea Township vs City of Johannesburg*, the Constitutional Court of South Africa had held that public authorities should engage meaningfully and in good faith with the affected groups and the Court facilitated an agreement that ensured affordable and safe accommodation for the occupiers. In the case of *Ajay Maken* too, the final judgment was given only after a Draft Protocol for rehabilitation was drawn up after consultative engagements with stakeholders, including the Shakur Basti residents. Given these precedents, before a public authority undertakes any action in Jahangirpuri, it should not only serve notice but also consult those that it seeks to evict.

The demolition of homes and shops of alleged culprits of communal riots portends the establishment of a perilous bulldozer state that dispenses vengeful majoritarian justice. Before taking any punitive action, every accused has to be given a fair trial where both parties provide evidence, and the prosecution has to prove beyond reasonable doubt that the accused committed a crime. But under the new rule of the bulldozer state, even before any charges are framed, the executive rather than the judiciary arbitrarily imposes a form of collective punishment upon a whole neighbourhood. The state speaks with a forked tongue, claiming that the action is against illegal encroachment while communicating to their intended audience that it was a retributive action.

The bulldozer itself has now become a symbol of brute state power and a revolting mascot to intimidate minorities. The demolition activities seem to be purposefully done under full media glare to convey the unbridled power of the bulldozer state. Worryingly, the new rule of the bulldozer state seems to have some level of public endorsement as the old rule of law takes a back seat. In the midst of such a majoritarian upsurge from the state and society, the rule of law cannot be saved purely through judicial intervention and would need broader political struggles that challenge India’s seemingly inexorable descent into tyranny.

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