

FORCED EVICTION: AN ILLEGITIMATE USE OF POWER BY THE STATE

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ABSTRACT

Forced Eviction in India is a menace for the underprivileged section of the society, that is, tribal, workers, and even minorities. Masked by the pretense of development, preservation, and clearance of unauthorized construction, state authorities deprive the affected of their right to adequate housing. There are umpteen instances when houses or shops are demolished by the state without following due process of law. This article shines some light upon the unlawful demolition of property happening in recent years, leading to the loss of shelter, health, and livelihood of the aggrieved families. It analyses the gravity of forced eviction on the lives and livelihood of affected families. Since no legitimate recognition has been granted to the issue of forced eviction in India despite UN guidelines on the same, the courts in several judgments have pronounced decisions in favor of the state authorities whose arguments are based on false premises. Hence, this article emphasizes the need for enacting a law against forced eviction so that no man or woman can be deprived of his/her house illegally.

Keywords: Forced Eviction, Right To Housing, Demolition, Unauthorized Construction, Property.

INTRODUCTION

A person dreams to have an affordable home to live his life peacefully with his family. When somebody separates him and his family from their beloved home or destroys it, their dream shatters. Think of the pain behind these words, “We went to our village for the Holi festival, and when we came back, we saw our houses had been demolished. We don’t get work these days, how do we survive now?” Sadly, these grievances remain unheard and are thrown in the wastepaper basket.

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This article aims to lend voice to the unheard homeless needy, in the context of India, who are forcibly evicted from their homes by state officials. Forced eviction is “the permanent or temporary removal against their 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.” It is an illegal act but still exercised by the authorities through the unbridled powers they have. Terming a construction on land of government’s interest as an unauthorized or illegal occupation, authorities either demolish the property or coerce them to leave the premises. Eviction can be either from private or public land. However, this article primarily focuses on evictions by the state from public land or to convert land for public/state purposes.

Under the pretext of illegal construction or unauthorized occupation, the state has converted several unprivileged persons into homeless. “Unauthorised Occupation”, as defined under the Public Premises (Eviction of Unauthorised Occupants) Act 1971, refers to any person occupying public property without having been granted permission to do so, as well as any person continuing to occupy the public property after the authority (whether granted or transferred in another manner) he was granted, has expired or been determined for any reason. 2022 demolitions in Delhi, Madhya Pradesh, Gujarat, Uttar Pradesh, and other recent events have unprecedentedly crossed all limits. These events owe their unparalleled occurrence to the arbitrary reasons used by the authorities and how they circumvented the law to smoothly execute evictions.

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The state fails to observe that it is not just a home they are demolishing but a means of security and livelihood for the affected family. Witnessing grave violation of the right to shelter and adequate housing, it becomes essential that a law against forced evictions is enacted. The judiciary must also actively utilize its powers to not only stay the order of eviction but also provide relief to the aggrieved party.

CONTEXT

Since time immemorial, India has given importance to having a ceiling above one’s head. Home to an Indian reflects security, dignity, and contentment. However, the people of this very nation have experienced deprivation of land, dislocation, and displacement from their

homes. From tribals in the forests to urban dwellers, lakhs of citizens are deprived of their homes on the pretext of illegal encroachment by them.¹

In February 2019, the apex court of India ordered the forced eviction of a million tribals from their customary lands.² After attracting criticism from the public, the order was stayed and is currently in abeyance. Had the order been executed, lakhs of Adivasis would not only be displaced but they would also have been deprived of their livelihood.

In 2020, the Home and Land Rights Network in its findings reported that over 36812 families have faced demolition that resulted in the forced eviction of a minimum of 173333 persons. Be it urban or rural, no person of any background has been discriminated against when it comes to eviction. However, in all cases, it is the poor or disadvantaged who have been deprived of their right to housing. The state has given a slew of arbitrary reasons to execute the demolition of property and displace the dwellers. 'Environmental' reasons such as disaster management and protection of flora and fauna have been cited the most, leading to the eviction of 49% of the total populace evicted in 2020 as per the record. Other reasons used are 'smart city' and 'development' projects, 'beautification' drives, and removal of 'encroachers'.³

In July 2021, Khori-Gaon daily-wage workers faced eviction when Faridabad Municipal Corporation demolished around 12000 houses. Months before eviction, they were living without any supply of water and electricity. Approximately, 10000-15000 families became homeless. Aggrieved included infants, children, pregnant and lactating women, elders, and persons with disabilities. To everyone's dismay, the eviction drive was ordered by the apex court. Similar actions with or without the order of courts or tribunals have been passed throughout the country. Reportedly, 51% of the evictions have been ordered by the courts or National Green Tribunals. In April 2021 in the Borivali area, Mumbai, almost 250 houses were demolished by Mangrove Conservation Cell. In another instance for the sake of development,⁴ in Gautam Buddha Nagar, Uttar Pradesh, five families were dislocated for the

¹ Shivani Chaudhary, *Forced Evictions Are Unjust. Here's Why They Should Concern us Even More Now*, THE WIRE (Aug. 19, 2020), <https://thewire.in/rights/forced-evictions-are-unjust-heres-why-they-should-concern-us-even-more-now>.

² Radhika Chitkara & Khushboo Pareek, *The Right to Land: A Study on Legality of Forced Evictions*, 2 NLUJ J. LEGAL Stud. 69 (2020).

³ SHIVANI CHAUDHARY ET AL., FORCED EVICTIONS IN INDIA IN 2020: A GRAVE HUMAN RIGHTS CRISIS DURING THE PANDEMIC, 15 (Housing and Land Rights Network 2021).

⁴ Shivani Chaudhry, *Development-Induced Displacement and Forced Evictions*, 41 Stud. Transnat'l LEGAL POL'y 591 (2010).

construction of the Noida International Greenfield Airport and relocated to another village without access to basic amenities and proper housing.

The 2022 Delhi demolition drive, with a bulldozer as its star, is a harbinger of the destruction of the shelter and livelihoods of residents. Without prior notice, North Delhi Municipal Corporation bulldozed the so-called illegal encroachments in Jehangirpuri, destroying houses and shops of residents, especially Muslims. The devil lies in the reasons cited by the Municipal Corporation for executing the demolition of properties. They conducted the demolition in the wake of communal violence caused during a Shobha Yatra on Hanuman Jayanti. Despite the Supreme Court's stay order, demolitions continued for an hour.⁵ Similar drives have been conducted in Khargone, Madhya Pradesh, and Khambhat, Gujarat. Such untoward events add another arbitrary reason to the list of false excuses used by the state to deprive a person of shelter. In these instances, the dwellers possessed valid property documents. For example, in the Khargone demolition drive, the district administration demolished the property built under Pradhan Mantri Awas Yojana (PMAY), depriving an elderly Muslim woman. The woman was residing there for almost a decade and a sudden realization of the administration that her house has been built over a land different from the allocated land stripped her of her roof.

Moreover, when properties are demolished to punish 'encroachers' and 'rioters in communal flare-up', there is no hope that the affected would be relocated to a suitable place with provisions of basic amenities.⁶

Approximately, 15.5 million people across India fear the demolition of their homes and other properties by the state. With courts providing legal backing to the state's activities, hopes for some respite appear bleak. Observe what a woman has to say after getting evicted from her house, "We have been living in Krishnappa Garden for more than 30 years. Our homes were demolished, without any prior notice, on 21 January 2021. For the last two years, the government is just saying *corona, corona* but we have not received any support from the state. Officials call us to get vaccinated, but not to give us food to fill our empty stomachs.

⁵ Umang Poddar, *Explainer: How the Jahangirpuri demolitions continued despite the Supreme Court stay*, SCROLL Apr. 20, 2022 <https://scroll.in/article/1022264/explainer-how-the-jahangirpuri-demolitions-continued-despite-the-supreme-court-stay>.

⁶ Colin Gonsalves & Anupradha Singh, *Evicting without Rehabilitating Violates Rights of Slum Dwellers*, The Indian Express (Jun. 18, 2021) <https://indianexpress.com/article/opinion/columns/manohar-lal-khattar-haryana-government-slums-rehabilitation-coronavirus-7363948/>.

We often feel like ending our lives, what to do?" Her grievances reflect the travesty of justice our country is mired in.

LEGAL PROCEDURE ON DEMOLITION OF UNAUTHORIZED CONSTRUCTIONS

A municipal corporation Act governs every city or town. Before razing any unauthorized construction, a show-cause notice has to be issued to the owner of the building stating why the illegal building or portion should not be demolished.

“According to Section 4 of THE PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971

Issue of notice to show cause against an order of eviction- If the estate officer has information that any person is in unauthorized occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the unauthorized occupation calling upon the person concerned to show cause why an order of eviction should not be made.”⁷

- The erring party is given enough time to reply to the civic body authorities.
- She/he also has the option to move court and can obtain a stay order for the demolition.
- If the court orders the demolition of the construction, the holder has no remedy;
- Nevertheless, the procedure states that MC authorities must notify the erring owner before the issue goes to court.
- If they did not inform, they can issue a legal notice to the respective municipal corporation and can claim damages. Even they can file a suit for damages
- Alternately, you can make an RTI (right to information) application to discover who ordered the demolition and what caused the notice to be waived.
- Although the building was unlawfully constructed, the building owner has the right to claim compensation because of the process infringement and financial loss.

⁷ The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, No. 1, § 4.

Every state has its own municipal rules and different procedures but the overall procedure followed is more or less the same as mentioned above, that the erring owner should give a time of 5-15 days after serving notice for the demolition.

VIOLATION OF DUE PROCESS OF LAW

The object and intent of any law stipulate that the said law would be used for the benefit and welfare of society. However, the officials find passage to circumvent the due process without any apparent violation of the law. “The UN Basic Principles and Guidelines on Development-based Evictions and Displacement” have prescribed fundamental norms to be followed while carrying out any eviction. Eviction laws at the center and state levels in India follow prescribed procedures to evict unauthorized persons. Every such law requires the issuance of notice to the occupant or owner of a land/property for a specified period with a chance to be heard.

Under the Delhi Municipal Corporation Act, 1957, the Municipal Commissioner may order the demolition of illegal constructions with a notice of at least five days and not more than fifteen days.⁸ However, before any demolition, the concerned person has to be notified with an opportunity to show cause, stipulating the period for filing an appeal. Before or after the order for demolition, the erection has to be sealed. The seal can only be removed either for demolition or on the order of the Appellate Tribunal or administrator.

M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 penalizes unauthorized development or any change in use of land that has been undertaken in violation of the order given, either granting, modifying, or revoking the permission for use of land.⁹ If any unauthorized construction has been carried out, the concerned authority can serve a notice to the owner of the said construction within five years of its development, providing him a period of one to three months to restore the land to its earlier state. The aggrieved person should be given fifteen days to apply for the permission of the concerned authority to continue the occupation of the said land. Until then, the notice shall stand withdrawn. The punishment for non-compliance with the notice is simple imprisonment that extends to six months or a fine of two

⁸ Delhi Municipal Corporation Act, 1957, § 343.

⁹ The M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973, 6, § 36.

thousand rupees or both which can further get extended in case of repeated violation of the law.¹⁰

Uttar Pradesh (Regulation of Building Operations) Act, 1958 carries the same fundamentals with a slight difference that demolition has to be done by the owner of the illegal construction himself within two months, after the expiry of which the authority will carry out the demolition.¹¹ The affected will have the right to appeal against the order before the Controlling Authority within thirty days after which the order shall have stayed till any appellate decision. Similar provisions are there in UP Urban Planning and Development Act, 1973.¹² Section 61 of the Gujarat Land Revenue Code was invoked during demolitions in Khambhat.

In 2022 demolitions, let alone provisioning an opportunity to be heard to the owners or occupiers of disputed land, the state authorities did not even serve a prior notice to the affected. No law provides for the demolition of properties of rioters or instigators of violence as is the case in demolitions following communal clashes. Besides, the municipal laws do not have any provisions, preventing forced eviction. Whenever the government wanted to appropriate land for development, especially forest lands or slums, authorities circumvented the due process to obtain the land without carrying out a social impact assessment, resettlement, or rehabilitation of the evicted as provided under the “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement act 2013”.

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The UN Guidelines require the conduction of an ‘eviction impact assessment’ before carrying out any eviction. There is no such provision in India. Besides, guidelines prohibit evictions in inclement weather, at night, during festivals, elections, and school examinations.¹³ Further use of force and violation is prohibited.¹⁴ Women and children were not only forced during eviction but also houses were around in certain instances.

¹⁰ *Id.* § 37.

¹¹ Uttar Pradesh (Regulation of Building Operations) Act, 1958 § 10.

¹² UP Urban Planning and Development Act, 1973 § 27.

¹³ UN Guidelines United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement, § 49.

¹⁴ *Id.* §50.

RIGHTS OF PEOPLE WHO ARE EVICTED BY THE GOVERNMENT

In “Olga Tellis vs. Bombay Municipal Corporation, a case involving Bombay JJ dwellers, a seven-judge Supreme Court constitution bench held that the right to life guaranteed by Article 21 of the Constitution included the right to livelihood, and ordered that alternative land be provided to the illegal squatters (i.e. JJ dwellers) in Bombay.”¹⁵ These unlawful encroachments or constructions are generally legalized after well-off persons pay a minimal fee. When poor people infringe on government land, they are frequently evicted and their settlements razed as if they are not humans at all.

Those individuals are generally from the lower socio-economic strata. They are commonly poor peasants from rural regions who moved to cities to make a livelihood as manual laborers, hawkers, and street peddlers, and many resided there for convenient access to their jobs. Poor rural persons who come to India's main cities with the desire to escape poverty have landed in deplorable living circumstances in Delhi, Mumbai, Kolkata, and other cities. True, the majority of them are occupiers of public property. They may not have a lawful right, but where will they go? Hundreds of thousands of people live in poverty. It is more than a legal issue. If the municipal authorities, compiling the orders of the Supreme court made the planning and arranged the places for those poor as a preventive measure then there will be no violation of the right to housing happens. People's right to the city can only be guaranteed by the judiciary.¹⁶

RIGHTS OF THE PERSONS WHOSE HOUSES WERE DEMOLISHED

“In several other decisions of the Supreme Court, e.g. Francis Coralie Mullin, vs Administrator, Union Territory of Delhi, it has been held that the word ‘life’ in Article 21 means a life of dignity, and not just ‘animal life’. In Uttar Pradesh Avas Evam Vikas Parishad vs. Friends Co-operative Housing Society Ltd., it has been held that the right to shelter is a fundamental right being part of Articles 19(1) (e) and 21 of the Constitution.”¹⁷

¹⁵ Olga Tellis v. Bombay Municipal Corporation, 1985 SCC (3) 545.

¹⁶ Mathew Idiculla, *A Right to the Indian City? Legal and Political Claims over Housing and Urban Space in India*, 16 Socio-LEGAL REV. 1,5 (2020).

¹⁷ Vineet Bhalla, *Why the trend of summarily demolishing properties of alleged criminals is patently illegal Whither due process?* The Leaflet(Apr. 23, 2022) <https://theleaflet.in/why-the-trend-of-summarily-demolishing-properties-of-alleged-criminals-is-patently-illegal-an-explainer/>.

In *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan*, it was decided by the apex court that, in light of the continuous migration of the rural populace into urban areas, and the resulting expansion of encroachments, the municipalities and panchayats shall produce plans for their resettlement in line with “Articles 243G and 243W of the Constitution”.

The court upheld:

“Right to the residence is one of the minimal human rights as a fundamental right. Due to want of facilities and opportunities, the right to residence and settlement is an illusion to the rural and urban poor. Article 38, 39, and 46 mandate the State, its duty, to minimize inequalities in income and opportunities, and status. It positively charges the State to distribute its largess to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful to make the life worth living with dignity.”

In any civilized community, the “right to life” includes the “right to food, a good environment, medical care, water, shelter, and education”. The Supreme Court observed in Chameli Singh vs. the State of U.P., adding:

“These are basic human rights known to any civilized society. The civil, political, social, and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not mere protection of his life and limb. It is a home, where he has opportunities to grow physically, mentally, intellectually, and spiritually.

Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation, and other civic amenities like roads, etc. to have easy access to his daily avocation. Right to shelter when used as an essential requisite to the right to life should be deemed to have been guaranteed as a fundamental right.”¹⁸

In Shantistar Builders v. Narayan Khimalal Totame, a three-judge-bench pronounced that traditionally, there are three basic needs of a man, that is, food, clothing, and shelter. The

¹⁸ Chameli Singh vs. State of U.P., Appeal (civil) 12122 of 1995.

distinction between an animal's and a human's need for shelter must be kept in mind. For animals, it is just basic protection; for a human, it must be an adequate shelter, helping him to develop all characteristics – “physical, mental, and intellectual”.

In summary, the Supreme Court has ruled that Article 21 of the Constitution guarantees the right to life, which also guarantees the right to livelihood. And if an individual is expelled from his home, even though a legal action and his jhuggi are demolished, he would lose his livelihood, as he must remain someplace to work.

As a result, in *Olga Tellis*, the court ordered that alternate land sites be allocated to slum inhabitants that are not too far away from their place of employment. The land occupied by them should take only after giving alternative residences to them.

RIGHTS OF STREET VENDORS

According to Clause 5.1 of the National Policy on Urban Street Vendors, 2009:

“The vendors should be informed/warned by way of notice as the first step before starting the clearing up or relocation process. In the second step, if the space is not cleared within the notified time, a fine should be imposed.

If the space is not cleared even after the notice and imposition of a fine, physical eviction may be resorted to. In the case of vending in a ‘No-vending Zone’, a notice of at least a few hours should be given to a street vendor to enable him or her clear the space occupied. In case of relocation, adequate compensation or reservation in allotment of the new vending site should be provided to the registered vendors.”

The Supreme Court acknowledged and confirmed this in *Maharashtra Ekta Hawkers Union v. Municipal Corporation, Greater Mumbai (2013)*¹⁹.

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 shields street vendors against sudden evictions and makes no mention of their goods/carts/wares being demolished.²⁰

¹⁹ (2014) 1 SCC 490.

²⁰ Abhayraj Naik, Wizards at Making Virtue of Necessity: Street Vendors in India, 11 Socio-LEGAL REV. 1, 59 (2015).

Section 3(3) of the Act states that no street vendor will be expelled from any place until a survey of these vendors in that area is completed per Section 3(1) and a vending certificate is provided to all those vendors. A vendor may not be expelled from a place listed in their vending certificate unless they have been given at least 30 days' notice, according to Section 18 of the Act. Only when the notification time has expired may the seller be forcibly ejected from the area, and a fine may be imposed. Moreover, in addition to the eviction described in Section 18, the officials have the authority to seize the vendor's goods as described in Section 19.

Section 38 of the Act empowers the respective states to formulate schemes for street vendors on some matters specified in the act. The Delhi government concerning this act, introduced a scheme called the Government of National Capital Territory of Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme, 2019. It mentioned the procedure to be followed in the demolition of the wares of the street vendors in Chapter 6.6 of the scheme mentioned above.

It further states that after receiving a thirty-day-notice period, if the vendor refuses to depart, they will be granted another three days to securely remove their goods, after which, *“the goods, wares, and articles shall be confiscated and removed, including the cart, containers and stands and the structure made by the vendor on the public place shall be demolished”*. However, reports from Jahangirpuri in Delhi reveal that none of these procedures was followed. Despite this established method for dealing with street vendors, the officials' decision to demolish the sellers' items without notice, rather than relocating or seizing them, can only be regarded as cruel.

CONCLUSION

Poor urban settlements emerge because of migration, privation, catastrophes, and promising initiatives in cities, according to the United Nations Committee on Economic, Social, and Cultural Rights. In General Comment 4 of the Resolution against Forced Evictions, the United Nations stated, “Shelter should be regarded as the right to live someplace in security, peace, and dignity”. Housing should be available to everyone, regardless of their financial situation. Since India has ratified the “United Nations International Covenant on Economic, Social, and Cultural Rights”, it must be read with Article 21 to enforce it in courts in India. The Supreme Court and other courts have recently ordered the demolition of illegal

constructions including large buildings, hotels, and other structures due to which the environment is polluted as well as the money spent on those was wasted.

There is no such stringent provision in our country for preventing these unauthorized constructions by both the poor and the powerful. Even there are no punishments or the preventive measures mentioned for halting the illegal evictions (majorly the poor), by the municipal authorities. “Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 of South Africa”, which provided for the prohibition of unlawful eviction and procedures for the eviction of unlawful occupiers, is exemplary for India to follow up and enact a law against forced eviction. The law must provide for eviction impact assessment in compliance with the UN Guidelines to understand the true state of affairs before eviction happens. A law will be a preventive way to protect the right to shelter and adequate housing and victory of all those aggrieved who have lost their right.



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