



Law Against Demolition Drives

For Prelims: Article 300A, 44th Amendment, UDHR, Article 25, Article 21, ICESCR, fundamental right, Supreme Court, Bachan Singh vs State of Punjab (1980), Vishaka vs State of Rajasthan (1997), Puttaswamy vs Union of India (2017)

For Mains: Law Against Demolition Drives, Judgements & Cases

Why in News?

The nation has been **witnessing a frenzy of demolition drives** for the past few weeks. **Article 300A of the Indian Constitution categorically states** “No person shall be deprived of his property save by the authority of law”.

- 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.
 - 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.

How are Such Demolition Drives Problematic?

- **Right to Adequate Housing:**
 - The right to housing is a **fundamental right** recognized under [Article 21 of the Indian Constitution](#).
- **ICESCR:**
 - 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 **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.
 - The ICESCR specifically **recognizes this in Article 5**.
- **International Human Rights Law Framework:**
 - 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’.
- 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”**.
- **ICCPR:**
 - Article 17 of the International Covenant on Civil and Political Rights (ICCPR) also **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**.

What are the Related Supreme Court Judgements?

- **[Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors \(1985\):](#)**
 - In this Judgement, the **Supreme Court ruled that eviction of pavement dwellers using unreasonable force**, without giving them a chance to explain, is unconstitutional.
 - It is a violation of their **[right to livelihood](#)**.
- **Maneka Gandhi vs Union of India (1978):**
 - In this Case, the **Supreme Court, while interpreting the scope of Article 21** of the Constitution, stated that the **“due process of law” is an integral part of “procedure established by law”**, explaining that such procedure must be fair, just and reasonable.
 - If the procedure prescribed by law is fanciful, oppressive and arbitrary in nature then it **should not be considered procedure at all** and thus not all the requirements of Article 21 would be satisfied.
- **Municipal Corpn., Ludhiana v. Inderjit Singh (2008):**
 - In this case, the apex court **categorically stated that if the requirement of giving notice is provided under a municipal legislation**, then this requirement must be necessarily complied with.
 - The Apex Court of the country has made it **unambiguously clear that no authority can directly proceed with demolitions**, even of illegal constructions, without providing notice and an opportunity of being heard to the occupant.
- **Other Important Judgements:**
 - The **Supreme Court** in cases like [Bachan Singh vs State of Punjab \(1980\)](#) , [Vishaka vs State of Rajasthan \(1997\)](#), and recently in the famous [Puttaswamy vs Union of India \(2017\)](#) 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.

Way Forward

- 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.
- Any justification for a demolition drive, as a penal consequence to a criminal act is **totally against established canons of criminal justice**.
 - The conduct of demolition drives, as a retaliatory measure, even with the avowed object to curb violence is a **clear act of subversion of the principle of rule of law**.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Q. Which Article of the Constitution of India safeguards one's right to marry the person of one's choice? (2019)

- (a) Article 19
- (b) Article 21
- (c) Article 25
- (d) Article 29

Ans: (b)

Exp:

- The right to marry is a component of the right to life under Article 21 of the Constitution of India which states that "No person shall be deprived of his life and personal liberty except according to the procedure established by law".

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