



Demolition Drive and Rule of Law

For Prelims: [Demolition Drive](#), [Fundamental Rights](#), Rule of Law, Article 226, Maneka Gandhi case (1978), Article 39 of Magna Carta, Article 21.

For Mains: Demolition Drive and Rule of Law, Law Against Demolition Drives, Judgements & Cases.

[Source: TH](#)

Why in News?

The Punjab and Haryana High Court's Suo Motu intervention in the [Demolition Drive](#) in Haryana, asking whether it is an exercise of **Ethnic Cleansing** and shed light on potential violation of [Fundamental Rights](#) and the erosion of rule of law.

- The recent demolition of dwellings and business establishments in Haryana has raised **significant constitutional and legal questions**.

What is Ethnic Cleansing?

- The term "**Ethnic Cleansing**" originated from a **UN-appointed Commission of Experts** chaired by Prof. Cherif Bassiouni in 1992.
- It refers to deliberate acts by one ethnic or religious group to forcibly remove another group from specific geographic areas using violent and terror-inspiring methods.
- Although not defined in Indian law, acts amounting to ethnic cleansing violate **constitutional guarantees under Part III of the Indian Constitution**.

What are the Reasons for Court's Intervention?

- The High Court took cognisance of the fact that the demolition drive was carried out without "**demolition orders and notices**", thereby violative of the procedure established by law.
- **Article 21** of Indian Constitution commands that no person shall be deprived of his life and personal liberty except according to the procedure established by law.
 - In the **Maneka Gandhi case, 1978**, the Supreme Court had expanded the scope of procedure established by law by ruling that such procedure has to be "fair, just and reasonable, not fanciful, oppressive or arbitrary", thereby introducing the **principle of "procedural due process"**.
- Despite such an expansion of the scope of Article 21, it is a constitutional travesty that scant regard for such basic **principles is demonstrated by elected governments**.

How Does the Dichotomy of The Rule of Law and The Rule By Law Impact the Constitution?

- While the rule of law is declared a basic feature of the Constitution, **rule by law is the antithesis** of all that is represented by rule of law.
- The rule of law is a **government run by law, not men.**
 - The roots of the idea of a rule of law can be seen in **Article 39 of Magna Carta, 1215** that declares that “No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.”
- This civilisational journey has **since then found its reflection in Article 21** of Indian constitution and had its contours expanded by the Supreme Court.
- This progressive journey gets **barbarically reversed when rule by law comes into play.**
- Rule by law is when the law is used as an instrument of **suppression, oppression and social control** in the course of implementing a political agenda.
 - The administrative act of demolishing dwellings and buildings without issuing notice and hearing the affected, to further selective social control necessarily **warrants judicial interference.**

What is the Procedure for the Demolition in the Illegal Occupation?

- Municipal Acts, such as the [Delhi Municipal Corporation Act, 1957](#) provide provisions that **prohibit encroachments on public roads** and footpaths.
- Before taking any action, the **municipal authorities are usually required to issue notices to the individuals** or establishments involved in illegal encroachments.
- Courts, including the Supreme Court, have emphasized the **importance of due process and have often ruled that proper notice** and opportunity to be heard are essential before any demolition is carried out.
 - In the **1985 Olga Tellis case**, emphasizing the right to livelihood and rights of slum dwellers, SC had noted that the right to livelihood is **a part of right to life.**
- If the individuals **fail to respond** or do not provide a satisfactory explanation, the municipal authorities may **proceed with the demolition process..**
- The authorities are generally expected to act proportionally, considering the nature of the violation and the **response taken to** adhere to principles of natural justice.

How are the 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”.
- **International Human Rights Law Framework:**
 - It is also a well-documented right under the international human rights law framework.
 - 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’.
 - UDHR does **not have any binding force behind it** but it is accepted by all nations as a **Moral Code of Conduct.**
- **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.

What are the Related Supreme Court Judgements?

- [Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors, 1985:](#)

- 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:**
 - 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:**
 - The apex court ruled that if the requirement of giving notice is provided under a municipal legislation, then this requirement must be necessarily complied with.
 - 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

- There is a need for **vigilance against the erosion** of constitutional values, particularly the rule of law and the protection of fundamental rights.
- Judicial intervention **remains crucial to prevent the misuse of power** and ensure that justice is meted out fairly and in accordance with established legal procedures.
- The ongoing struggle between the rule of law and **rule by law highlights the significance of upholding constitutional ideals** for a just and inclusive society.

PDF Refernece URL: <https://www.drishtiias.com/printpdf/demolition-drive-and-rule-of-law>