



Bulldozer justice and the erosion of Due Process: A constitutional Critique

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Abstract

This paper explores the concept of “bulldozer justice” where authorities demolish a person’s property solely based on criminal accusations, without following proper legal procedures. In a democratic country like India, justice must be rooted in law and fairness. Punishment for any offense should be delivered through lawful means, respecting the individual’s rights and ensuring due process. India follows the reformatory approach to justice, which focuses on changing a person’s behavior rather than retaliating with harsh measures. Demolishing someone’s home as a form of punishment not only violates constitutional protections but also undermines basic human rights and international legal standards. Such actions reflect a misuse of power and threaten the principles of justice, equality, and rule of law that form the foundation of a democratic society.

Keywords: Accused, shelter, constitution, bulldozer, justice, collective punishment, rule of law

Introduction

“The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter, all his force dares not cross the threshold of the ruined tenement!” So be it – unless he has justification by law” William Pitt^[1] AV Dicey in 1885 gave one of the clearest explanations on the rule of law using three postulates^[2] It is evident from his postulates that under rule of law no one is above the law and is equal before the law of the land. Under the Indian constitution, Part III guarantees the fundamental rights. The very first fundamental right is the right of equality. Another right that is superior is the right to life which embodies in it the number of other rights including the right to shelter. In a lawful society, it is justified by philosophers the right of the society to punish the offender and create a deterrence to future acts of crime.^[3] However, the right to punish is only available to the courts. In recent times there has been a rampant use of bulldozer razing structures belonging to accused of crimes or their near ones. The usage is not only the violation of the accused right but also of the family members living in the same dwelling as that of the accused creating the problem of collective punishment.

Separation of Powers

Indian Constitution provides for separation of power and duties, viz., the Legislature, the Executive, and the Judiciary. Various judgments of the Apex Court including the Constitution Bench judgment have reiterated the concept and its application under the Indian Constitution. In *Rai Sahib Ram Jawaya Kapur and others v. State of Punjab*,^[4] the constitution bench of the Supreme Court observed, “It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently

differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.”^[5] Thus, the Court made it clear that under our Constitution, no branch of the State is meant to take over the core responsibilities that rightfully belong to another.

After the *Kesevananda Bharati*^[6] judgment, in the *Indira Nehru Gandhi v. Raj Narain*,^[7] the Constitution Bench of the Supreme Court reaffirmed that the separation of powers is an essential element of the Constitution’s basic structure. However, the bench observed that even though our Constitution doesn’t strictly separate the powers of the government, disturbing the balance between the courts, lawmakers, and the executive can harm our democracy. It also made clear that Parliament has no right to step into court matters such as deciding if someone is guilty or who should win a lawsuit.^[8]

In *I.R. Coelho (Dead) by LRs. v. State of T.N.*^[9] a nine-judge bench of the Apex Court recognized that separating powers among different branches of government acts as a system of checks and balances, helping to prevent misuse of authority and protect against tyranny. The Court said that equality, rule of law, judicial review, and separation of powers are all important parts of our Constitution. These ideas are closely linked, without equal treatment, laws aren’t fair, and rights don’t matter if courts can’t check when they’re violated. It also warned that giving too much power to one part of the government is risky, so it’s the court’s job to make sure no branch crosses its limits.^[10] In *State of U.P. and others v. Jeet S. Bisht and Another*,^[11] the Court highlighted that the idea of separating powers isn’t just about stopping government overreach anymore. In today’s world, where people have rights to social and economic benefits, it’s just as important to keep an eye on government inaction. With new types of authorities and private bodies doing public work, the system of checks and balances must expand to make sure these rights are protected. The Court stressed that shaping society and its institutions is now part of this responsibility.^[12] John Rawls has beautifully explained, “That is the law. And no Spartan, subject or

citizen, man or woman, slave or king, is above the law. Where-ever law ends, tyranny begins”^[13] The blatant ignorance of the principle by the executive in directing the razing of the houses needs to be checked and controlled to preserve the supremacy of the constitution.

Administrative Transparency and Responsibility

In a democracy, the executives are the trustees of the citizens and their every action must establish trust with their actions. The judiciary has a responsibility to check the executive actions and maintain their accountability. In Delhi Airtech Services Private Limited and another v. State of Uttar Pradesh and another,^[14] the court observed that when officials or bodies act on behalf of the State using legal powers, they’re expected to be even more fair, timely, and responsible than usual. They must follow all rules of good governance, and are fully accountable to the public for their actions.^[15]

In Centre for Public Interest Litigation v. Union of India,^[16] the Court said that when the government does something that causes harm, people have the right to take legal action. Courts are there to protect our rights and make sure the government acts fairly and responsibly. Government officials must be honest and do their jobs properly. If they don’t act when they should, or make careless decisions, they should be held accountable. The Supreme Court in Express Newspapers Pvt. Ltd. and others v. Union of India and others,^[17] said that if someone in power uses it for the wrong purpose, even with good intentions, it can still be considered misuse. If the power isn’t used honestly for its true purpose, the action becomes invalid and is treated as a fraud on power.^[18]

Presumption of Innocence and Fair Trail Under Criminal Jurisprudence

It is mandated in a free society that the criminal justice process remains confined to the principles of rule of law. The foundation for every criminal system is the principle that “innocent until proven guilty”. The origin of this principle is found in the roman law principle of “Ei incumbit probatio qui dicit, non qui negat” which was introduced by the Roman Emperor Antoninus Pius.^[19] However, selective demolition of the houses belonging to the accused violate this principle.^[20] Right to Fair Trail is one of the important facets of the Principle of Natural Justice which is a tool to achieve rule of law. H.L.A. Hart on Natural Justice has said that natural justice means treating people equally, without bias or personal interest. It’s about making sure decisions are made in a fair and honest way.^[21] John Rawls has explained that natural justice means having fair rules, fair judges, and fair trials to find the truth and protect justice.^[22] Lord Megarry in John v Rees^[23] said that even if a case seems simple or the outcome looks obvious, it’s still important to follow the rules of natural justice. Everyone should get a fair chance to be heard. Many cases that seemed clear at first were later proven wrong or changed after discussion. People feel hurt and angry if decisions are made against them without letting them speak or explain their side. So, fairness and proper process should never be skipped.^[24]

Right to Shelter

Integrated reading of Art. 19(1)(e) and Art. 21 guarantees the right of shelter to the citizens. In various judgments of

the supreme court the court has recognised the right multiple times. In State of Karnataka v. Narasimhamurthy,^[25] the Supreme Court held that the right to shelter is a fundamental right under Article 19(1) of the Constitution. Shelter means more than just a roof but it also includes access to basic needs like clean water, sanitation, electricity, and a safe environment.^[26] In Chameli Singh v. State of U.P. and another,^[27] it was held that to live a full life in a proper society, people need more than just food and water. They need things like education, healthcare, clean surroundings, and a safe place to live. A home isn’t just a roof, it’s a space where someone can grow, learn, and live with dignity. To live without decent shelter, people can’t enjoy their rights or live a good life.^[28] In Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Others, the Apex Court referring to the earlier judgment of the same court held The right to life enshrined under Article 21 include meaningful right to life and not merely animal existence. India is a signatory to the International Covenant on Economic, Social and Cultural Rights, an agreement that recognizes every person's right to live in safe and suitable housing.^[30]

Idea of Shared Punishment: A Threat

In India, the right to life is guaranteed under Article 21 of the Constitution, and over time, courts have expanded its meaning to include the right to shelter. This means every person has the right to live in a safe, clean, and secure home with basic facilities like water, electricity, and sanitation. Now imagine a situation where many families live in the same building or structure, for example, a slum cluster, a chawl, or a shared housing unit in an urban area. If one person living there is accused or found guilty of a crime, can the government demolish the entire building, affecting all the other innocent families? This raises a serious concern about collective punishment, which means punishing a whole group for the actions of one individual. In a fair legal system, punishment should be personal and based on individual guilt, not shared by others who had nothing to do with the crime.

The India law clearly states that every person is considered innocent until proven guilty. So, if a house where several people or families live is demolished just because one person living there is accused or convicted of a crime, it unfairly punishes everyone else. This kind of action treats innocent people as if they are guilty too, which goes against the basic principles of justice. It is important to refer to Justice Krishna Iyer in the judgment of Gujarat Steel Tubes Ltd. and others v. Gujarat Steel Tubes Mazdoor Sabha and others,^[31] wherein he has explained that in India’s legal system, punishment should be based on a person’s own actions, not on what others have done. He said it’s wrong to punish a whole group just because a few people did something wrong. In workplaces too, no employee should be fired unless there is clear proof of their own mistake. Blaming and punishing many for the fault of a few may seem easy, but it goes against the basic idea of fairness and justice.^[32]

supreme court guidelines for demolition

In Re: Directions in the matter of Demolition of Structure,^[33] the Supreme Court gave direction for demolition. It was directed that before any building is demolished, proper legal steps must be followed. A written notice should be given to the owner or person living there, allowing at least 15 days to

respond or challenge it. The notice must clearly explain what part of the building is illegal, why it's being targeted, and when and where the person can present their side. It should be sent by registered post and pasted on the building. All details of demolition must be recorded digitally and shared with the district officials. If the person doesn't respond, they should still be given time to vacate or fix the issue. Only parts of the building that are truly illegal and cannot be regularized should be demolished. Before demolition, the officials must inspect the site, record everything, and video the process. A full report must be made and shared online to keep everything transparent and fair.

Conclusion

There is a threat of the executive transgressing its power and acting as adjudicator which is the domain of the judiciary. In a fair and just society, no one should be seen as guilty unless it's proven through a proper legal trial taking action against someone is like tearing down their home without following the law is not just unfair, it shakes the very core of justice. If decisions are made based only on blame or public pressure, and not on facts and legal process, it goes against the basic values of fairness and human rights. It's the job of the courts to decide if someone is guilty, not the government or its officials. When those in power go beyond their limits and use force without legal approval, it shows a failure in how the system is supposed to work. Such misuse of authority needs to be stopped to protect people's rights and keep democracy strong.

Reference

1. William Pitt, Speech in the House of Commons (1763), cited in *Miller v. Minister of Pensions*, 2 All ER 372 (UK). 1947
2. AV. Dicey, Introduction to the Study of the Law of the Constitution, Macmillan Co. Ltd, 1952:183–205. His three postulates on Rule of Law are
3. "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land", as contrasted to the "the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint"
4. "no man is above the law" and that "every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals" and
5. "the predominance of the legal spirit" or that "the general principles of the constitution... are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the courts".
6. Ronald J. Rychlak, "Society's Moral Right to Punish: A Further Exploration of the Denunciation Theory of Punishment", 65 Tulane L. Rev. 299 Available at <<https://www.tulanelawreview.org/pub/volume65/issue2/societys-moral-right-to-punish>> (last visited 13 Oct. 2025). 1990
7. Rai Sahib Ram Jawaya Kapur & Ors. v. State of Punjab, 1955 INSC 27; AIR 1955 SC 549.
8. Ibid.
9. His Holiness Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr. (1973) 4 SCC 225. This judgment established the Doctrine of Basic Structure, a crucial principle in Indian constitutional law. It affirmed that while Parliament has the power to amend the Constitution, it cannot alter or destroy its basic structure or fundamental features. This judgment has served as a vital check on the legislature's amending power and protects the essential constitutional identity of India.
10. Indira Nehru Gandhi v. Raj Narain, (1975) 2 SCC 159.
11. Ibid. The court observed that: "The political usefulness of the doctrine of separation of powers is now widely recognized though a satisfactory definition of the three functions is difficult to evolve. But the function of the Parliament is to make laws, not to decide cases. The British Parliament in its unquestioned supremacy could enact a legislation for the settlement of a dispute or it could, with impunity, legislate for the boiling of the Bishop of Rochester's cook. The Indian Parliament will not direct that an accused in a pending case shall stand acquitted or that a suit shall stand decreed... The reason of this restraint is not that the Indian Constitution recognizes any rigid separation of powers. Plainly, it does not. The reason is that the concentration of powers in any one organ may, by upsetting that fine balance between the three organs, destroy the fundamental premises of a democratic government to which we are pledged."
12. I.R. Coelho (Dead) by LRs v. State of Tamil Nadu, (2007) 2 SCC 1.
13. Ibid. The Court observed that "Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review. All these would be redundant if the legislative, executive and judicial powers are vested in one organ. Therefore, the duty to decide whether the limits have been transgressed has been placed on the judiciary. Judicial review is justified by combination of "the principle of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review"
14. State of U.P. & Ors. v. Jeet S. Bisht & Anr., (2007) 6 SCC 586.
15. Ibid. The court observed, "If we notice the evolution of separation of powers doctrine, traditionally the checks and balances dimension was only associated with governmental excesses and violations. But in today's world of positive rights and justifiable social and economic entitlements, hybrid administrative bodies, private functionaries discharging public functions, we have to perform the oversight function with more urgency and enlarge the field of checks and balances to include governmental inaction. Otherwise we envisage the country getting transformed into a state of repose. Social engineering as well as institutional engineering therefore forms part of this obligation."
16. John Rawls, Collected Papers, ed. by Samuel Freeman, Harvard University Press (2021).
17. Delhi Airtech Services Pvt. Ltd. & Anr. v. State of U.P. & Anr., (2011) 9 SCC 354.
18. Ibid. para 213. These authorities are instrumentalities of the State and the officers are empowered to exercise the

- power on behalf of the State. Such exercise of power attains greater significance when it arises from the statutory provisions. The level of expectation of timely and just performance of duty is higher, as compared to the cases where the power is executively exercised in discharge of its regular business. Thus, all administrative norms and principles of fair performance are applicable to them with equal force, as they are to the government department, if not with a greater rigour. The well-established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office.”
19. Centre for Public Interest Litigation v. Union of India, (2005) 8 SCC 202.
 20. Express Newspapers Pvt. Ltd. and others v. Union of India and others, (1986) 1 SCC 133.
 21. Ibid. para 119 The court observed, “Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers.”
 22. Ajj Murjani, “Guilty until Proven Innocent – Recent Scenario of Criminal Jurisprudence”, Legal Bites, available at <<https://www.legalbites.in/topics/articles/guilty-until-proven-innocent-procedural-hurdles-in-justice-delivery-in-india-893567>> (last visited 05 Oct. 2025).
 23. Ananya Sharma, “Bulldozer Justice: Punitive Populism in India”, The Loop, 18 July 2022, available at <<https://theloop.ecpr.eu/bulldozer-justice-punitive-populism-in-india/>> (last visited 12 Oct. 2025).
 24. H.L.A. Hart, *The Concept of Law*, 2nd edn., Oxford University Press, New York (1994), p. 206. He summarised that, “It may be said that the distinction between a good legal system which conforms at certain points to morality and justice, and a legal system which does not, is a fallacious one, because a minimum of justice is necessarily realized whenever human behaviour is controlled by general rules publicly announced and judicially applied. Indeed we have already pointed out, in analysing the idea of justice, that its simplest form (justice in the application of the law) consists in no more than taking seriously the notion that what is to be applied to a multiplicity of different persons is the same general rule, undeflected by prejudice, interest, or caprice. This impartiality is what the procedural standards known to English and American lawyers as principles of 'Natural Justice' are designed to secure. Hence, though the most odious laws may be justly applied, we have, in the bare notion of applying a general rule of law, the germ at least of justice.”
 25. John Rawls, *A Theory of Justice*, Revised Edition, The Belknap Press of Harvard University Press, Cambridge (1999). He has denied the notion as, “Finally, there are those precepts defining the notion of natural justice. These are guidelines intended to preserve the integrity of the judicial process. If laws are directives addressed to rational persons for their guidance, courts must be concerned to apply and to enforce these rules in an appropriate way. A conscientious effort must be made to determine whether an infraction has taken place and to impose the correct penalty. Thus, a legal system must make provisions for conducting orderly trials and hearings; it must contain rules of evidence that guarantee rational procedures of inquiry. While there are variations in these procedures, the rule of law requires some form of due process: that is, a process reasonably designed to ascertain the truth, in ways consistent with the other ends of the legal system, as to whether a violation has taken place and under what circumstances. For example, judges must be independent and impartial, and no man may judge his own case. Trials must be fair and open, but not prejudiced by public clamor. The precepts of natural justice are to insure that the 3 legal order will be impartially and regularly maintained.”
 26. John v Rees, (1970) Ch. 345
 27. Ibid. at pg. 402
 28. State of Karnataka v. Narasimhamurthy, (1995) 5 SCC 524
 29. Ibid. at p. 526, para 7.
 30. Chameli Singh v. State of U.P. and another, (1996) 2 SCC 549
 31. Ibid. para 8. “In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All 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 a mere protection of his life and limb. It is 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. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right

- to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.”
32. Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Others, 1997 (11) SCC 121. It was also observed, “though it is correct to say that roadways and pathways should be kept free from encroachers, should it not be held in cases where the poor had resided in an area for long time, the State ought to frame schemes and allocate land and resources for resettle and rehabilitating urban poor.”
 33. International Covenant on Economic, Social and Cultural Rights, art. 11(1), adopted on 16 Dec. 1966, entered into force on 3 Jan. 1976, available at <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> (last visited 13 Oct. 2025).
 34. Gujarat Steel Tubes Ltd. & Ors. v. Gujarat Steel Tubes Mazdoor Sabha & Ors., (1980) 2 SCC 593.
 35. Ibid. at para 111. The cardinal distinction in our punitive jurisprudence between a commission of enquiry and a court of adjudication, between the cumulative causes of a calamity and the specific guilt of a particular person, is that speaking generally, we have rejected, as a nation, the theory of community guilt and collective punishment and instead that no man shall be punished except for his own guilt. Its reflection in the disciplinary jurisdiction is that no worker shall be dismissed save on proof of his individual delinquency. Blanket attainer of a bulk of citizens on any vicarious theory for the gross sins of some only, is easy to apply but obnoxious in principle.”
 36. In Re: Directions in the matter of Demolition of Structures, W.P. (C) No. 295 of 2022, decided on 13 Nov. 2024 (SC)